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9 Attorneys for Plaintiff
10 JOHN EARL CAMPBELL
11
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15
16

17 JOHN EARL CAMPBELL,

) NO. C05-5434 MJJ (EDL)

18 Plaintiff,

) **PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE IN OPPOSITION TO
DEFENDANTS JOSEPH DEELY AND
NATIONAL RAILROAD PASSENGER
CORPORATION'S MOTIONS FOR
SUMMARY JUDGMENT OR IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

19 v.

20 NATIONAL PASSENGER RAILROAD
21 CORPORATION dba AMTRAK, JOE
22 DEELY, and DOES 1-15, inclusive,
23

Defendants.

)
24 DATE: May 22, 2007
25 TIME: 9:30 a.m.
26 DEPT: CTRM. 11, 19th Floor
27

28 HONORABLE MARTIN J. JENKINS

DISCOVERY CUT-OFF: March 23, 2007

TRIAL DATE: July 23, 2007

1 **TO: DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiff JOHN EARL CAMPBELL will ask the
 3 Court to take judicial notice of the following documents pursuant to Federal Rule of Evidence, Rule
 4 201(d):

5 1. Declaration of Mary J. Fontaine in Opposition to Defendant's Motion for Summary
 6 Judgment in *Hardeman v. Amtrak*, U. S. District Court Case No. C04 3360 SI;

7 2. Declaration of Debrice Gallo in Opposition to Defendant's Motion for Summary
 8 Judgment in *Hardeman v. Amtrak*, U. S. District Court Case No. C04 3360 SI;

9 3. Declaration of C. Faheem. Hardeman in Opposition to Defendant's Motion for
 10 Summary Judgment in *Hardeman v. Amtrak*, U. S. District Court Case No. C04 3360 SI.

11 4. Declaration of Meriola Gotthardt in Opposition to Defendant's Motion for Summary
 12 Judgment in *Morgan v. Amtrak*, U. S. District Court Case No. C96-03585 SI;

13 5. Declaration of Michael Williams in Opposition to Defendant's Motion for Summary
 14 Judgment in *Morgan v. Amtrak*, U. S. District Court Case No. C96-03585 SI;

15 6. Declaration of Joe George in Opposition to Defendant's Motion for Summary
 16 Judgment in *Morgan v. Amtrak*, U. S. District Court Case No. C96-03585 SI;

17 7. Declaration of Arthur Elwood Conley in Opposition to Defendant's Motion for
 18 Summary Judgment in *Morgan v. Amtrak*, U. S. District Court Case No. C96-03585 SI;

19 8. Amended Declaration of Abner J. Morgan, Jr. in Opposition to Defendant's Motion
 20 for Summary Judgment in *Morgan v. Amtrak*, U. S. District Court Case No. C96-03585 SI;

21 9. Department of Fair Employment And Housing Enforcement Division Directive No.
 22 233.

23 Dated: May 1, 2007

PRICE AND ASSOCIATES

25 _____
 26 /s/ *Pamela Y. Price*
 27 PAMELA Y. PRICE, Attorneys for Plaintiff
 28 JOHN EARL CAMPBELL

ATTACHMENT - EXHIBIT -1

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6 Attorneys for Plaintiff
 C. FAHEEM R. HARDEMAN
 7
 8

9
 10 UNITED STATES DISTRICT COURT
 11
 12 NORTHERN DISTRICT OF CALIFORNIA

13 C. FAHEEM R. HARDEMAN,	)	NO. C04-3360 SI
14 Plaintiff,	)	DECLARATION OF MARY J.
15 v.	)	FONTAINE IN OPPOSITION TO
16	)	DEFENDANT'S MOTION FOR
17 AMTRAK/CALTRAIN RAILROAD,	)	SUMMARY JUDGMENT
18 Defendant.	)	DATE July 28, 2006
19	)	TIME: 9:00 a.m.
	)	DEPT: 10, 19 th Floor
	)	HON. SUSAN ILLSTON

21 I, MARY J. FONTAINE, declare that:

22 1. I am a resident of the State of California. I make this Declaration on personal
 23 knowledge in opposition to Defendant's Motion for Summary Judgment.

24 2. I am a Caucasian woman. I was employed by Amtrak from March 1988 to
 25 October 1992.

26 3. I took a leave of absence from Amtrak for approximately one (1) year in
 27 1989.

1 4. While employed at Amtrak, I held the positions of Assistant Conductor and
 2 Conductor, respectively.

3 5. During the time I worked at Amtrak, Joe Deely was first Transportation
 4 Superintendent, then Superintendent of the Oakland Yard.

5 6. During approximately my last two years working at Amtrak, from 1990 to
 6 1992, Joe Deely was my immediate supervisor.

7 7. I was and still am familiar with Joe Deely's voice. I could recognize it
 8 anywhere. While working at Amtrak, I heard Joe Deely use racial epithets to refer to African-
 9 American employees.

10 8. On one particular occasion, I was at the Transportation Office at the Oakland
 11 Station. I was located in the outer office, and Joe Deely was around the corner inside of his office.
 12 I heard Deely talking to another person, either in his office or on the phone. I heard Deely referring
 13 to an African-American Transportation Department clerk, Renee, as a "n*gger."

14 9. During my last two years at Amtrak, I was elected to be Chairman of the
 15 Local Committee of Adjustment, a function akin to a Shop Steward or Griever, for my union, the
 16 United Transportation Union ("UTU").

17 10. Through my position at the UTU, I represented other Conductors in
 18 disciplinary matters, pay problems, vacation time and other employment issues subject to the
 19 contract between UTU and Amtrak.

20 11. In my capacity as union representative, I regularly met with Joe Deely
 21 informally, during one-on-one meetings to discuss, among other issues, disciplinary matters.

22 12. Through my dealings with Joe Deely involving union issues, I observed that
 23 he had a racist attitude towards African-Americans. I observed that he treated people of color in a
 24 derogatory manner. He would speak to African-Americans alternating with condescending or
 25 aggressive tones of voice, whereas when he addressed Caucasian employees, men in particular, his
 26 tone was more solicitous. His body posture would also reflect his derogatory attitude towards
 27 African-Americans.

28

1 13. Over the course of attending these informal meetings with Joe Deely, I
2 observed that he tended to handle disciplinary matters involving white employees informally, while
3 disciplinary matters involving Black employees were handled formally more often.

4 14. I have represented African-American Conductors at disciplinary hearings for
5 infractions that would have been handled informally, if handled at all, had they involved a
6 Caucasian Conductor.

7 15. On one occasion, I worked with an African-American Conductor, Charles
8 Washington, who was being disciplined for allegedly sitting in a private room in a sleeper car,
9 visiting with a passenger. The passenger was a witness and appeared via telephone on Mr.
10 Washington's behalf, stating that nothing out of order occurred in the sleeper car.

11 16. Though Mr. Washington was not formally investigated, Joe Deely harassed
12 him about the incident for several months and threatened to have a formal investigation.

13 17. On another occasion involving Charles Washington and a passenger issue,
14 yet another passenger appeared as a witness on Mr. Washington's behalf at a formal investigation
15 because Joe Deely was not willing to handle the matter informally.

16 18. In my experience, if Charles Washington were white, questions involving
17 Conductor behavior or interaction with passengers would not have been turned in for disciplinary
18 consideration. Even if the matter involving Conductor behavior or interaction with passengers was
19 handled as a disciplinary matter, and if Charles Washington were Caucasian, the worst outcome
20 would have been remedial training. Instead, Mr. Washington was subjected to formal investigation.

21 19. In my experience as a UTU representative, I know of many incidents arising
22 out of personnel in the Operating Department involving revenue problems that were being discussed
23 informally.

24 20. I represented another African-American Conductor, O.B. Scott, who was
25 being formally investigated on a revenue issue, contrary to the practice of handling revenue issues
26 with leniency. It is my opinion that in O.B. Scott's case, a formal investigation was not warranted.
27 Furthermore, the allegations against him were not substantiated. He was, however, terminated. Joe
28

1 Deely was the Hearing Officer. I believe in this case he was also the deciding official.

2 21. Over the course of my employment at Amtrak, the incident involving Mr.
3 Scott was the first time I was aware of where a Conductor or Assistant Conductor was formally
4 disciplined over a revenue matter. As a practice, employees identified as having revenue issues
5 were given great leniency. The employee in question generally met privately with Mr. Deely to
6 discuss the problem. Often, employees would simply remit the missing revenue over the course of
7 time. This occurred without any formal investigation.

I declare under penalty of perjury under the laws of the State of California and the
United States that the foregoing is true and correct. If called as a witness, I could and would testify
competently to the matters stated herein.

11 || Executed this 6th day of July, 2006, at Berkeley, California.

/S/

MARY J. FONTAINE, Declarant

18

ATTACHMENT - EXHIBIT -2

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6 Attorneys for Plaintiff
 C. FAHEEM R. HARDEMAN
 7
 8

9
 10 UNITED STATES DISTRICT COURT
 11
 12 NORTHERN DISTRICT OF CALIFORNIA

13 C. FAHEEM R. HARDEMAN,	)	NO. C04-3360 SI
14 Plaintiff,	)	DECLARATION OF DEBRICE
15 v.	)	GALLO IN OPPOSITION TO
16	)	DEFENDANT'S MOTION FOR
17 AMTRAK/CALTRAIN RAILROAD,	)	SUMMARY JUDGMENT
18 Defendant.	)	DATE: July 28, 2006
19	)	TIME: 9:00 a.m.
	)	DEPT: 10, 19 th Floor
	)	HONORABLE SUSAN ILLSTON

20 I, DEBRICE GALLO, declare that:

21 1. I began working at Amtrak in 1994 as a coach cleaner. Prior to starting at
 22 Amtrak, I was employed as a dental assistant for nearly nine years. I assisted private dentists, and I
 23 also worked at Delta Dental, a non-profit organization that provides benefits to a variety of
 24 employers. I am an African-American woman. I make this Declaration on personal knowledge in
 25 opposition to Defendant's Motion for Summary Judgment.

26 2. In 2001, I was promoted to Assistant Conductor. I became a Locomotive
 27 Engineer in 2004.
 28

1 3. I applied for engine service in 2001. I had eight (8) years of seniority at
2 Amtrak that year. I was passed over in favor of people with less seniority than I.

3 4. I applied for engine service again in 2002, 2003 and 2004. I was passed over
4 in favor of people with less seniority than I, including some whom I had trained and some who were
5 at Amtrak barely one (1) year.

6 5. In 2004, I was initially told that I was being passed over for engine service
7 again on grounds that I had a waiver in my file resulting from an incident that occurred in February
8 2003, which had been my only instance of discipline at that time. When I applied for engine service
9 in 2004, it had been one (1) year and three (3) months since the incident in question.

10 6. Brice Carroll and John Hanson were promoted over me in 2004, though they
11 had been at Amtrak only for fifteen (15) months. George Solomini and Tim Flipp, who were
12 promoted over me in 2004, had been at Amtrak two (2) years. At that time, I had been at Amtrak
13 for ten (10) years.

14 7. The infraction in February 2003 for which I was cited occurred at Redwood
15 City Station. It was pouring rain. There were two crews involved in a maneuver to swap
16 equipment. One crew included me as the Conductor and Mike Cecconi as engineer. The second
17 crew consisted of John Campbell as the conductor and another engineer. My crew was shoving a
18 lite engine.

19 8. As Conductor, it is my duty to communicate to the engineer when it is okay
20 to move the engine.

21 9. The engine was approximately twenty (20) feet from a switch.

22 10. Mike Cecconi impatiently beckoned me to get back onto the engine. I
23 jumped onto the engine, but before I could say a word to Engineer Cecconi, he ran through the
24 switch approximately twenty (20) feet away. He had not waited for me to notify him whether the
25 switch was clear or not. He split the switch.

26 11. Everyone who is present during a maneuver, whether as an observer, trainee
27 or student, has the responsibility to protect the movement of the train.
28

1 12. Tom McCracken was the supervisor present at the time. He was standing at
2 the switch when I jumped back onto the engine. Because he was present, if he saw that the switch
3 was not lined, he should have notified Cecconi not to proceed through it. Mr. McCracken is
4 Caucasian.

5 13. Similarly, Lee Guillory was present as an observer, and getting paid for his
6 time. Because he was also present, if he saw that the switch was not lined, he should have notified
7 Cecconi not to proceed through it.

8 14. Following the incident, Tom McCracken, Lee Guillory and Mike Cecconi
9 had a discussion in Tom McCracken's Amtrak-issued car. Although the car seated four people, I
10 was excluded from joining their discussion. So instead, I went and sat in the cab of engine.

11 15. When McCracken, Guillory and Cecconi were finished with their discussion,
12 Guillory and Engineer Cecconi took the train to San Jose Station. I, however, was pulled from
13 service by Tom McCracken and administered a drug and alcohol test.

14 16. Eventually, I was charged with an operating rule violation. I signed a waiver,
15 receiving five (5) days of unpaid suspension, of which I served three (3) days. It was my very first
16 instance of discipline, after nearly ten years of working at Amtrak. No one else was cited for this
17 incident.

18 17. I have witnessed other incidents of operating rule violations involving
19 Engineer Cecconi where he was not investigated or disciplined. Mr. Cecconi is Caucasian.

20 18. One such incident also occurred in or about February 2003 in Redwood City.
21 The crew on that day included me and Mike Cecconi as engineer. Lee Guillory, whose title was
22 Assistant Conductor, was also present but not assigned to our crew. He was there on "special duty."

23 19. The maneuver we were engaging in involved a "drop," which means that a
24 car is dropped to the side and the engine keeps going. When a car is dropped, it means that the
25 engineer "cut" the car. On Caltrain, dropping passenger cars is a violation. We were working with
26 freight cars that day.

27 ///
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1 20. I observed the assigned Assistant Conductor, who is Caucasian, cut the car
2 while Cecconi operated engine at approximately twenty (20) miles per hour. The correct procedure
3 for coupling cars is to travel up to only four (4) miles per hour.

4 21. Before the maneuver, I warned the Assistant Conductor and Mike Cecconi
5 not to engage in it, but they went ahead and dropped the cars. Mr. Cecconi was shoving the engine,
6 i.e. moving backwards, but he did not have anybody protecting the movement. As a result, he hit
7 the cut cars behind him at approximately twenty (20) miles per hour.

8 22. Due to the rate of the engine's high speed at impact, there was a lot of
9 damage to the engine. The damage I observed was the following: All of pipes to the radiator were
10 split; there was water coming out of the bottom of the engine; the engine was knocked off the block
11 four inches; the radio was sheared off the console; all of the floorboards came up; and the frame of
12 the engine was bent in the middle. I also know that the engine was out of service for months.

13 23. As an Engineer, I know that if an engineer causes equipment damage above a
14 certain dollar amount, the Federal Railway Association rules require his or her license be taken
15 away. To my knowledge, Mike Cecconi's license was not taken away, he was never investigated or
16 disciplined for this incident. The matter was simply pushed under the rug.

17 24. I and other employees used to refer to Mike Cecconi as "Teflon Don,"
18 because no disciplinary action ever "stuck" to him. He routinely violates Amtrak's operating rules
19 without any consequence or discipline. I have personally witnessed him commit rules violations for
20 which he was not cited.

21 25. I also know of Bruce Shelton's reputation among Caltrain employees. His
22 reputation is that he has "tested every single derail that Amtrak has," meaning, he has run through a
23 lot of derail switches, at the rate of about one switch per year. Although Mr. Shelton has been
24 suspended for the split switches, he has always been permitted to return to work. Mr. Shelton is
25 Caucasian.

26 26. On April 10, 2003, I was part of the crew that experienced a derailment in
27 Redwood City. I was the Assistant Conductor, John Campbell was the Conductor and Mark Jaeger

1 was the engineer. Although we ran over the switch and there was a derailment, nobody was
2 disciplined because it was found to have been caused by a defective switch. Mark Jaeger is
3 Caucasian.

4 I declare under penalty of perjury under the laws of the State of California and the
5 United States that the foregoing is true and correct. If called as a witness, I could and would testify
6 competently to the matters stated herein.

7 Executed this 7th day of July, 2006, at Oakland, California.
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9 _____/s/
10 DEBRICE GALLO, Declarant
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ATTACHMENT - EXHIBIT -3

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6 Attorneys for Plaintiff
C. FAHEEM R. HARDEMAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 C. FAHEEM R. HARDEMAN,) NO. C04-3360 SI
14 Plaintiff,)
15 v.)
16 AMTRAK/CALTRAIN RAILROAD,)
17 Defendant.)
18 _____)

**DECLARATION OF C. FAHEEM R.
HARDEMAN IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

DATE: July 28, 2006
TIME: 9:00 a.m.
DEPT: 10, 15th Floor

HON. SUSAN ILLSTON

I, C. FAHEEM R. HARDEMAN, declare that:

21 1. I am the Plaintiff in the above-entitled action against Amtrak. I make this
22 Declaration on personal knowledge in opposition to Defendant's Motion for Summary Judgment.

23 2. I was employed by Defendant Amtrak for eleven (11) years from June 1992
24 to May 30, 2003. At the time of my termination, I was working as a Locomotive Engineer.

25 3. I am a native of the Bay Area. I was born in Martinez, California and raised
26 in the East Bay. I graduated from Skyline High School in Oakland in 1973. I attended Humboldt
27 State University and received my B.A. in or about 1977. I then attended Cal State Hayward for
28 approximately a year working on a Masters' degree in Public Administration.

1 4. Prior to my employment with Amtrak, in addition to various odd jobs, I was
2 employed as a Firefighter with the City of Richmond, California for approximately ten (10) years. I
3 also obtained my real estate salesperson's license in 1980. I obtained my real estate broker's license
4 in or about 1989. Between 1980 and 1992, I was employed with several real estate firms, including
5 my own, up until I was hired to work for Amtrak.

6 5. I began working for Defendant AMTRAK as an Assistant Conductor ("AC")
7 on June 19, 1992. I interviewed with Caltrain by chance and I was hired on the spot as an Assistant
8 Conductor. In May 1993, I became an engineer assigned to the San Francisco Yard after
9 successfully completing the engineer training program. My working conditions deteriorated rapidly
10 when I tried to become an Engineer. I had to lobby and advocate on my behalf to even train and sit
11 for the qualifying exam.

12 6. During the week of May 11, 1993, I was informed of the results of the
13 interviews for the position of Locomotive Engineer. Bob Peterson, then Road Foreman of Engines,
14 explained how all applicants scored closely to each other during the interview process, and stated
15 that the only way to distinguish applicants was by seniority. At that time, I had the requisite
16 seniority to make me eligible for the position, as calculated from my hiring date at Amtrak. I also
17 felt that I had interviewed well.

18 7. Notwithstanding my conversation with Mr. Peterson, I was passed over in
19 favor of Mr. Gibson, a candidate with less seniority at Amtrak than I. Even though Mr. Gibson had
20 prior engine service experience before coming to Amtrak, he had been out of service for five years.
21 There would be no objective advantage of hiring him over me, because he would have to complete
22 the same training program in Wilmington, Delaware and log the same amount of training hours as I.

23 8. I lodged a complaint, voicing my protest to Amtrak management that I was
24 being passed over for someone with less seniority. It was only in the eleventh hour, that is, a day or
25 two before the extensive engineer training program was set to start, that I was informed by
26 telephone I could have the job. I accepted and attended the training program in Delaware in June
27 1993. I successfully completed my probation and qualified as an Engineer on February 1, 1995.
28

1 9. During my employment with Amtrak, there were never more than five
2 African-American Engineers on the Caltrain P.C.S. at any given time. Between 1990 and 1998, I
3 was the only African-American hired or promoted to Engineer. With the exception of a Human
4 Resources Manager, Caltrain's management appeared to consist solely of white males. There were
5 more African-American Conductors or Assistant Conductors than African-American Engineers, but
6 in my estimate, never more than a dozen African-American Conductors out of hundreds of
7 Conductors working on the Caltrain line.

8 10. During my tenure as an Engineer with Amtrak, I was never told that I was an
9 unsafe Engineer, or that my performance was "inadequate." In fact, I was consistently commended
10 by my supervisors as being "a good engineer," "careful" and "very safety conscious." My
11 performance as an Engineer was evaluated every six months between February 1995 up to the date
12 of my termination. I never received a "bad" evaluation. I have some but not all of my semi-annual
13 evaluations. (True and correct copies of all of the Amtrak Locomotive Engineer Evaluation-Form
14 1875 in my possession for this period of time are attached hereto as Exhibit A.)

15 11. In September 1995, my supervisor's comments on my performance included
16 the statement that I was "excellent at maintaining proper speed" and "very safety conscious." (See
17 Exhibit A, Bates No. 000708.) In my evaluation in December 1997, my supervisor's comments
18 included the statement that "Mr. Hardeman is a careful engineer, very aware of the need for safety."
19 (See Exhibit A, Bates No. 000709.) In June 1998, my supervisor's comments on my performance
20 were that:

21 Good engineer. Very aware of need for safety. Very good job of
22 communicating with crew and mechanical forces. Good use of bell
23 and whistle. Excellent speed control in mechanical tracks.

24 (See Exhibit A, Bates No. 000710.)

25 12. In my November 1998 semi-annual performance evaluation, my supervisor
26 again commented that I was a "good engineer." (See Exhibit A, Bates No. 000711.) This comment
27 was repeated in my December 1999 performance evaluation. (See Exhibit A.) In June 2001, my
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1 supervisor did not make written comments, however, my overall performance score increased from
2 a "2" to a "1" which, according to Amtrak's rating scheme means that "employee consistently
3 demonstrates skill and knowledge above average." (See Exhibit A, Bates No. 000712.).

4 13. In my experience at Amtrak, Amtrak's disciplinary practices were subjective,
5 where the severity of discipline hinged on the identity of the employee in question. Whether or not
6 charges were brought against an employee depended more on who you were than the nature or
7 seriousness of the alleged rule violation. Managers routinely picked and chose who they wanted to
8 discipline. Rules were not always followed, and it depended on who the person was and who found
9 them doing something wrong that determined whether discipline would be imposed or what type of
10 discipline.

11 14. On July 11, 2001, I was being evaluated again by Billy Rogers, a different
12 supervisor, despite my excellent evaluation on June 4, 2001. Ironically, while Mr. Rogers was
13 present with me and my train was loading passengers at the station, we observed Engineer Robert
14 Castiglione drive Train No. 70 through the station without stopping. Mr. Rogers asked me "is that
15 illegal?" In fact, it was quite illegal and very dangerous to drive a train through a station without
16 stopping or communicating with another train already in the station. Except in extremely rare
17 circumstances, it is a clear violation of Amtrak's operating rules. I made a contemporaneous note of
18 the incident on my Engineer Evaluation form. (See Exhibit A, Bates No. 000713.) Mr. Rogers did
19 not make any effort to cite Mr. Castiglione at the time. To the best of my knowledge, Mr.
20 Castiglione was not cited nor disciplined and no other official record of the incident was created.
21 (See Exhibits A and B to the Declaration of Elias Munoz in Support of Defendant's Motion for
22 Summary Judgment.)

23 15. In contrast, on July 22, 2001, I was the Engineer where the train was delayed
24 because it could not pass an air brake test. I was operating a new engine and kept testing the air
25 brake without success. At some point, I discovered that an Amtrak rule book was sitting on the
26 switch which controlled the brake release - the book must have accidentally been pushed onto the
27 switch, preventing me from being able to set the brakes. This was my first actual, albeit minor,
28

1 operating rule violation in almost seven (7) years, since September 18, 1994. Although the
2 placement of the book was totally inadvertent and unknown to me, I received a fifteen (15) day
3 suspension.

4 16. Between 1994 and 2001, I was cited at various times for tardiness. (See
5 Exhibits E, G & I to the Declaration of R. Scott Erlewine in Support of Defendant's Motion for
6 Summary Judgment ("hereinafter Erlewine DEN").) In April 1997, I received a five (5) day
7 suspension for tardiness. (See Erlewine DEN, Ex. F.) In March 1999, I received a Formal
8 Reprimand for tardiness. (See Erlewine DEN, Ex. H.) In March 2000, I received a ten (10) day
9 suspension when a co-worker and I returned late from dinner. (See Erlewine DEN, Ex. J.)

10 17. On December 13, 2002, I was involved in a derailment when AC Charles
11 Breda accidentally threw a railroad switch. At the time, my crew included AC Breda, AC Soule and
12 two trainees. I was moving the train forward after I received a verbal signal from the AC to do so.
13 This was a routine move that was based upon our switch list. I had gone over the switch a few
14 minutes earlier and was not aware that the switch had been re-lined before I was told to move back
15 over it. The switch should have been locked by the AC after I passed over it the first time because
16 the switch list indicated that I should return over the same track.

17 18. Immediately after we derailed, AC Breda apologized to me profusely and
18 acknowledged his error in throwing the switch into the wrong direction. The Amtrak manager who
19 reported to the scene initially took AC Breda away as if he was going to be disciplined. Shortly
20 thereafter, I was called in for an interview and taken out of service. Though I was not at fault for
21 the derailment of the car, I was charged with a rule violation and received a thirty (30) day
22 suspension, with fifteen (15) days held in abeyance.

23 19. On April 10, 2003, my crew included AC Paul Soule and AC Bruce Shelton.
24 At that time, AC Soule had approximately thirty-three (33) years of service on the railroad,
25 including approximately six (6) years working in the San Francisco Yard. I knew that he was an
26 experienced conductor and I relied upon his experience and expertise. We had worked together for
27 at least five (5) months prior to this date.
28

1 20. As an engineer, I was responsible for controlling the brakes and gas of the
2 train. Under Amtrak's rules and operating procedures, however, I cannot move the train without
3 being directed to do so by my conductor. On April 10, 2003, as part of their duties, AC Soule and
4 AC Shelton were responsible for directing me, ensuring a clear pathway and proper alignment of
5 switches, and providing me with instructions before and during the actual movement of the train.

6 21. Neither AC Soule nor AC Shelton upheld their duties to 'be on the point' or
7 'protect the movement of the train. Being "on the point" means that a conductor will either ride at
8 the leading edge of the train or walk in front of the train in the direction of travel to ensure that the
9 track is clear.

10 22. Prior to the derailment, we had approached a red signal light. In order to pass
11 this signal, we had to receive clearance from San Jose Control. AC Soule contacted San Jose
12 Control by radio and received clearance from San Jose Control Operator Denver Payne to continue
13 past the red signal. AC Soule appeared to be in a hurry to move the engine, and motioned to me to
14 move the engine backward. I insisted that I come to a full stop as required by Amtrak's operating
15 rules. After I came to a full stop and blew my whistle, I proceeded slowly along the track.

16 23. Due to the curvature of the track, my vision was restricted. I relied upon AC
17 Soule to be my eyes while backing the engine into what is called a "pocket track." We were
18 backing the engine into this pocket track to be stored for future use. I properly relied on AC Soule's
19 go-ahead signal to back up before the train derailed. There were four (4) switches between the red
20 signal at Switch 45 and the derail switch No. 39. Although I was looking backwards in the
21 sideview mirror from time to time, I could not see the switches or the tracks below us as we moved
22 backwards. I did not see the derail switch and I was not looking for it.

23 24. At no time did AC Soule ask me if the switches were lined properly, or if the
24 track was clear to proceed, or anything of that nature. I did not "call the route" or give any type of
25 verbal indication to AC Soule that the switches were lined properly for the move. On the contrary,
26 it was his primary responsibility as the Assistant Conductor to ensure that the movement was
27 protected. I saw him looking at the tracks from the sideview mirror on the engine. There was no
28

1 conversation between us to the effect that no one needed to be on the ground in front of the train
2 protecting the movement as we backed up.

3 25. Prior to this incident, while I understood that it was part of my responsibility
4 as the Engineer to stop the train if the track was not clear, I had never been told or asked to get
5 down from the engine myself to protect the movement. It was always my understanding that this
6 was the Conductor's responsibility. In my nine (9) years as an Engineer, I had never had occasion
7 to direct a Conductor on how to protect the movement.

8 26. At the time of the derailment, I was very surprised. Both AC Soule and
9 Shelton also appeared surprised to discover that the derail switch was active. As soon as we
10 realized that we had derailed, AC Soule immediately stated to AC Shelton and I that "San Jose
11 Control "fu - - -ed up" by giving us the go-ahead past the red signal. He also stated that "we did
12 nothing wrong. Don't you guys worry about it. We got permission to go by the signal. San Jose
13 Control messed up."

14 27. The engine derailed on Switch No. 39. Prior to the derailment on that day, I
15 had shoved engines and trains over that switch. I had never seen Switch 39 operating in a derail
16 position. The normal position of that switch was lined to go into the pocket. As far as I knew, that
17 derail switch was not in service. Having that particular switch in service and using it as a derail
18 would be particularly hazardous because it leads directly into the employee parking lot. In the event
19 of a derail on that particular switch, the risk of injuring persons or destroying property would be
20 quite substantial.

21 28. I believe that the train was traveling less than five (5) miles per hour at the
22 time of the derailment. There were no injuries to any person and only minimal damage to the train.
23 I observed the engine being put back onto the track and it was put back into service that day.

24 29. I was taken out of service that day along with AC Soule and AC Shelton. We
25 are all required to submit to drug tests. I was out of service for approximately three (3) days. I
26 passed the drug test and was told to return to work on the Yard.

27 30. Throughout my career with Amtrak, I have been subject to random drug tests.
28

1 I have never failed a drug test. Normally, I receive a written result of the drug test. I never received
2 the actual results of my drug test from the April 10th derailment which was highly unusual, and
3 caused me to suspect some irregularities in Amtrak's investigation of this incident.

4 31. On the day of the derailment, I prepared a brief statement for the report that is
5 normally prepared following an unusual incident. I gave my statement to one of the Amtrak
6 managers. I was not interviewed or questioned about what happened that day, nor at any time
7 thereafter. I never spoke to any Amtrak manager regarding AC Soule's statement that I allegedly
8 told him that the route was clear. No one from Amtrak ever asked me if AC Soule had asked the
9 question, or if I made the alleged statement to AC Soule. Once I returned to work a few days after
10 the incident, I continued to work as normal until the date that I was terminated.

11 32. Following the Investigatory Hearing on May 22, 2003 regarding the
12 derailment on April 10, 2003, Amtrak terminated my employment. Prior to my termination, Amtrak
13 offered me a thirty (30) day suspension. By contrast, AC Soule, who is Caucasian, was assessed
14 five days suspension, of which only one day was served and four days held in abeyance. AC
15 Shelton, also Caucasian, was assessed three days of suspension, and Charge One against him was
16 withdrawn. Based on my knowledge and experience as an engineer, I believe that the discipline
17 assessed against me for this incident far exceeded the discipline typically imposed on other
18 employees for similar rule violations.

19 33. I was terminated on May 30, 2003. In July 2003, approximately two (2)
20 months later, Amtrak offered me a "conditional reinstatement" to service waiver, which included a
21 waiver of any claims arising out of the April 10th derailment and a "last chance" agreement. I also
22 would not receive any back pay for the sixty (60) days of missed work. I declined the offer because
23 I felt that the discipline was harshly disproportionate and that Amtrak's entire course of conduct in
24 the matter was racially motivated.

25 34. Throughout my employment at Amtrak, I was aware that I was being treated
26 differently because of my race. The work environment frequently felt hostile. While I was still on
27 probation as an Engineer, it was a frequent occurrence that as I approached a station, other engineers
28

1 on trains already at the station would cut their headlights off. Without seeing the headlights of
 2 another train, I could be misled to think that the train was no longer in the station. This created a
 3 dangerous situation because of the potential for me to hit a passenger, and it was a rule violation for
 4 me to go through the station while another train was there without stopping. As a result of this type
 5 of conduct, I made it my practice to drive the train with extreme caution when approaching a
 6 station, and every time I came to a station, I operated as if another train were in the station. I
 7 stopped relying upon the headlights of my fellow engineers. It made my early experience very
 8 stressful.

9 35. During the first few years of my employment as Engineer, there were
 10 constant problems with the crew clerks when I was on the extra board. As a new Engineer, I
 11 received my work assignments through the extra board which operates like a registry - when
 12 assignments are available, Engineers and conductors are called according primarily to seniority.
 13 New employees are called first. As long as you were listed on the extra board, you were required to
 14 report to duty upon notification from the crew clerks.

15 36. One particular occasion stands out when my grandmother passed away on
 16 July 5, 1997. The crew clerk refused to accept the fact that I would not be available to take an
 17 assignment. Another incident occurred on September 20, 1996, when I was initially called, but then
 18 denied the right to work because I was not listed on the San Jose extra board. Their hostile
 19 demeanor made me dread calling into the extra board.

20 37. In September 1994, there was an incident in San Jose involving myself and
 21 Carlos Caynos. I was a new Engineer and Mr. Caynos was acting as the Conductor. We split a
 22 switch and I determined that the switch was actually defective. Nonetheless, both Mr. Caynos and I
 23 waived an investigatory hearing and accepted discipline for this incident.

24 38. During a subsequent meeting with Bob Peterson, Mr. Peterson told me that
 25 he had lost respect for me following the 1994 San Jose incident, that I had 'fallen from his good
 26 graces.' He also suggested that it would 'take a while' to get back into his good graces, that I
 27 should 'shape up' and 'not cause trouble for the following six months.' He accused me of having
 28

1 told Mr. Caynos a ‘cockamamie story’ to shift the blame on him.

2 39. During the same meeting, I was also falsely accused of “stealing company
 3 funds” by getting unauthorized extra board funds. Mr. Peterson asked me why had I received
 4 \$500.00 guarantee funds, whereas Mike Shanahan had only gotten \$100.00? Mr. Peterson was
 5 highly upset at that point of the meeting. He also told me that I marked up too late, and directed my
 6 union representative to open the provision of the Union contract relating to marking up after
 7 completing assignments. I explained that the crew clerks give Engineers three hours to mark up
 8 before breaking the guarantee.

9 40. On December 4, 1995, Frank Hogan called me for a job at 9:30 a.m., even
 10 though I was not eligible until 10:10 a.m. following the required rest period. Mr. Hogan said he had
 11 made a mistake. The next day, after a phone call from Mr. Hogan at 10:40 a.m., I called him back
 12 at 10:43 a.m. During the conversation with Mr. Hogan, he began to insinuate that I had marked up
 13 late or missed calls for jobs. When I asked him how many times in the past year I had marked up
 14 late or missed calls, it became apparent to me that he was trying to blame me for an extra board
 15 problem Amtrak was having.

16 41. On December 24, 1995, I received misinformation regarding the time to sign
 17 up for a job for December 25, 1995. I was told to sign up by 6:30 p.m., whereas the time expired at
 18 6:00 p.m. I would have missed my chance to work had I relied on the misinformation given to me.
 19 Fortunately, I signed up early and was able to work that day.

20 42. I was also falsely accused of refusing job assignments. For example, on
 21 January 15, 1996, someone named Billy wanted to write me up for refusing to cover an assignment.
 22 The day before, on January 14th, I called Billy at 8:30 p.m., 11:30 p.m., 12:00 a.m. and 12:30 a.m.,
 23 asking Billy to page me if there is an early job available. At 1:45 a.m., Billy paged me for a 5:40
 24 a.m. assignment in San Francisco. I returned the page to accept the job. Fifteen minutes later,
 25 however, Billy told me he would write me up for refusing to cover an assignment.

26 43. In December 1996, I purchased a new 1997 Mercedes E-class automobile.
 27 My Caucasian co-workers made petty snide comments about the fact that I had a new car. On at
 28

1 least three occasions, my car was vandalized while parked in the employee parking lot. On each
 2 occasion, none of the surrounding vehicles appeared to be damaged. Eventually, I had to park my
 3 car outside the employee parking lot on the public street.

4 44. There were also times when I was shunned and ostracized by my co-workers
 5 as I described in my deposition on May 2, 2006. (See Ex. 8 to the Declaration of R. Scott Erlewine
 6 at pp. 170:25-171:1-21.) Eventually, I stopped going to the locker room on my breaks to avoid my
 7 co-workers. On one occasion, Mr. Peterson told me that I was “too arrogant” because I was an
 8 engineer now. In early 2003, Trainmaster and Supervisor Al Sturken motioned me to come towards
 9 him by curling his finger, as though I were a child. It was a demeaning gesture.

10 45. Throughout 1996 and 1997, Mr. Peterson continued to treat me differently
 11 than Caucasian engineers. Things came to a head with an incident on February 16, 1997, where Mr.
 12 Peterson ordered me to report to work in violation of the union rules. When I brought this issue to
 13 his attention, he became extremely angry, yelled at me and implied that I was a baby before he hung
 14 up on me. Despite the intervention of my union representative, Mr. Peterson insisted that I show up
 15 to work at the San Jose Yard. Even though I followed his orders to work the San Jose Yard, on
 16 February 19th, Mr. Peterson manipulated my work schedule to keep me from working extra hours.
 17

18 46. On June 25, 1999, I asked Mr. Peterson if there were any assignments
 19 available. Mr. Peterson told me that all jobs were filled and stated that “you don’t want to work, so
 20 we don’t need you.” In actuality, I was seeking work and did not refuse to cover assignments. For
 21 example, on January 18, 1996, I accepted a late call from Joel O’Connor: I accepted a call at 7:27
 22 p.m. to mark up at 7:30 p.m. for a 7:55 p.m. train.

23 47. On September 29, 2000, as I was approaching a tunnel, Signal 3.8 was
 24 thrown red in my face without warning. When I notified Lou at San Jose Control, he told me that it
 25 was normal, that Jim Richie, an Engineer on another train going through the tunnel, had put the
 26 switch into hand throw. This was not normal and could have easily caused me to be subjected to
 27 discipline for failing to stop at a red signal.

28 48. I was also falsely accused of failure to protect an assignment. On

1 January 7, 2002, I had a flat tire while on my way to work. I called the Trainmaster, the Mechanical
 2 Foreman, the sign-up room and San Jose Control, and notified them all that I would be late, but still
 3 in time to operate Train No. 64. I asked Frank, a co-worker, to have someone air test the train in
 4 advance. I arrived at the Yard six minutes prior to departure, getting to the train with four minutes
 5 to spare.

6 49. Trainmaster Al Sturken came to the train to tell me that the assignment was
 7 filled and that I was to go home. When I asked for the reason I was being sent home, he smugly
 8 told me, ‘because we can’t let you work with those shoes and there was no job briefing.’ There was
 9 still enough time to get my work boots, but he told me that the decision had been made and that I
 10 was welcome to call Mark Collins, then the Road Foreman of Engineers. When I asked for his
 11 number, Al was stalling, while passengers were still loading. I finally talked to Mark Collins, but
 12 not until after the train pulled away from the station. I requested a letter in my file specifying the
 13 details of this incident, that I did make efforts to protect my assignment despite the flat tire on my
 14 way to work. I was eventually paid for that day.

15 50. On another occasion, in the winter of 2003, as I was walking to my
 16 assignment with my Caucasian co-workers, I was pursued by Amtrak police with lights flashing and
 17 sirens blaring on the Yard, as though I were a criminal. Two officers rushed up to me and
 18 surrounded me. I was later told it was because I was not wearing a name tag and the officers did not
 19 recognize me. None of the other Caucasian crew members were wearing their name tags, yet I was
 20 the only one singled out and pursued by Amtrak police. I also had been working on Amtrak
 21 property for more than ten (10) years. I knew that this incident was a case of racial profiling and
 22 requested that Amtrak investigate the matter and issue me a formal apology. Supervisor Michael
 23 Howard and Trainmaster Al Sturken denied both of these requests. I felt humiliated in front of my
 24 co-workers, who later found it humorous to use the radio to call me ‘criminal’ and ‘crook’
 25 following that incident. Radio transmissions teasing me in this manner could be heard throughout
 26 Amtrak’s property from San Jose to San Francisco.

27 51. In addition, I was excluded from opportunities given Caucasian Engineers.
 28

1 For instance, in approximately 2001, an Engineer who was already licensed but was training on
 2 Caltrain territory rode with me for approximately one to two weeks on my regular run from San
 3 Jose to San Francisco. I asked Supervisor Mark Collins about getting compensated because
 4 Engineer Instructors normally get additional compensation. Mr. Collins informed me that I would
 5 not receive the normal compensation given to other Caucasian engineers who served as Instructors.

6 52. I also asked Mr. Collins why there were Engineers with less seniority than I
 7 who were Engineer Instructors, even though I had expressed interest in becoming an Instructor. Mr.
 8 Collins told me that it was because of my alleged ‘tardiness’ and ‘other issues.’ I asked him if I
 9 were getting punished. He denied that I was getting punished, just that I would not be selected for
 10 this type of employment opportunity and/or receive additional compensation.

11 53. I was always aware that because I am African-American, I was being keenly
 12 watched by Amtrak management for any hint of mistakes or missteps. When I agreed to waive my
 13 right to investigatory hearings over the years, I did so to avoid what I was told would be more
 14 severe punishment if an investigatory hearing were actually convened. I signed the waiver in
 15 December 2002 attached as Exhibit N to the Erlewine Declaration even though I knew I was not at
 16 fault and the fifteen (15) day suspension was unfair because once Will Hastings and Billy Rogers
 17 were involved, I believed that it would come down to my word against theirs.

18 54. I refused to take the waivers offered in 2003 because I thought that the
 19 evidence would clearly show that I was not at fault, specifically, the defective wiring of the switch
 20 and the fact that I could not see the derail switch would be easily proven. I thought that bringing the
 21 case before a neutral third party would expose Amtrak’s racist practices.

22 55. I am a proud father of five children. I could not afford to walk away from a
 23 full-time job while I still have young children to raise. I worked diligently to become an excellent
 24 Amtrak Engineer and provide the utmost service and safety for Caltrain passengers. The
 25 termination of my employment was extremely unfair and devastating to me and my family.

26 I declare under penalty of perjury under the laws of the State of California and the
 27 United States that the foregoing is true and correct. If called as a witness, I could and would testify
 28

1 competently to the matters stated herein.

2 Executed this 7th day of July, 2006, at Oakland, California.

3 /s/

4 C. FAHEEM R. HARDEMAN Declarant

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AMTRAK LOCOMOTIVE ENGINEER EVALUATION—FORM 1875

EMPLOYEE IDENTIFICATION NO.

A.S161019102144,AST,7

OPTION (A,B,C, OR D)

11

M.I.

F

FIRST NAME

Clifford

M.I.

L

LAST NAME

Cobert

S

SUPERVISOR LAST NAME

Peterson

P

SUPERVISOR ID NO.

S161019102144,AST,7

29

EVALUATION DATE

01/19/2010

30

OPERATED FROM

SETO

31

OPERATED TO

SETD

32

NO. OF ENGS.

33

NO. OF CARS

34

WRIT. AUTH.

35

ENGINE NO.

019101

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IND.BRK.

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SAFETY INSTR.

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RADIO PRO.

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P.C.

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AIR

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SPEED

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FORM 1875 INSTRUCTIONS AND CODES

NOTE:

Blocks (NOTE: Print legibly. All zeroes should be slashed - 0)
 1-10 Employee's Identification No.
 11 OPTION (A,B,C, OR D); A = Add, B = Browse, C = Change, D = Delete
 12-13 OCC -Employee's Qualification at time of Evaluation
 14-16 CREWBASE - Enter Employee's Crewbase
 ER = Engineer FE = Fireman ET = Engineer Trainee
 17-19 DIVISION-Employee's Home Division.

100 = Western Division 400 = Philadelphia Division
 200 = Midwest Division 500 = New York Division
 300 = Washington Division 600 = Boston Division

20-29 Supervisor's Employee Identification Number.
 30-35 Date on which Engineer Evaluation was performed.

36-38 OPERATED FROM - Enter the location at which the evaluation was begun.
 39-41 OPERATED TO - Enter the location at which the evaluation was ended.

42-45 TRAIN NO. - Timetable schedule number of train.

46-49 ENGINE NO. - Enter Lead Locomotive, or Control Car Number.

50 NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consist affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

51-52 NO. OF CARS - Enter total number of cars in train's consist.

USE THE CRITERIA IN ITEMS 0 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

0 Enter a ZERO if category is not applicable. (Does not apply to item No. 72)

1. Employee consistently demonstrates skill and knowledge above average
2. Employee fulfills all requirements for skill and knowledge. There may be a minor deviation above or below expectations, but the general performance level results in safe and efficient train operation.
3. An employee with sufficient time and experience who shows shortcomings in knowledge and/or skill. Also applicable to an employee who is progressing adequately, but is not yet fulfilling all position requirements.
4. Performance is unsatisfactory and does not meet minimum job standards.

When an employee is given a 3 or 4 rating in any field, specific information regarding what corrective actions are deemed appropriate to eliminate the employee's deficiencies, and what the employee's deficiencies are, must be included in "SUPERVISOR'S COMMENTS" and in "AREAS) NEEDING IMPROVEMENT", respectively.

An employee given an OVERALL rating of 4 must be withheld from service until brought up to standard. A formal program of instruction must be fulfilled in order to accomplish this goal. Prior to returning to service, the employee must complete a qualifying run with a Supervisor, and achieve an OVERALL evaluation rating of at least 3.

KNOWLEDGE OF/COMPLIANCE WITH:

- 53 Operating Rules
- 54 Special Instructions
- 55 Written Authorities
- 56 Safety Instructions
- 57 Radio Procedures
- 58 Requirements of the Physical Characteristics of the territory the train is operated over.
- 59 Air Brake Instructions
- 60 Spédes required by Operating Rules, Special Instructions, or operating conditions.
- 61 Signal Indications

ENROUTE TRAIN HANDLING ABILITY INVOLVING USE OF:

- 62 Throttle
- 63 Independent brake
- 64 Automatic brake
- 65 Dynamic brake
- 66 Blended brake

SKILL/KNOWLEDGE EXHIBITED WHEN:

- 67 Starting train
- 68 Stopping train
- 69 Maintaining schedule

KNOWLEDGE OF:

- 70 Assigned equipment
- 71 Troubleshooting procedures

OVERALL SCORE - See above for specific instructions regarding this item.

SUPERVISOR'S COMMENTS - This section must be completed in certain instances as noted above.

AREAS) NEEDING IMPROVEMENT - This section must be completed in certain instances as noted above.

AMTRAK LOCOMOTIVE ENGINEER EVALUATION-FORM 18/5

Case 4:05-cv-05434-CW Document 84-4 Filed 05/01/2007 Page 18 of 28

EMPLOYEE IDENTIFICATION NO.		OPTION (A,B,C, OR D)	
1 12018917 10		11 CLEFFORD	
CREWBASE SJC		DIVISION 1010	
EMPLOYEE'S LAST NAME HARDYMAN		FIRST NAME CLIFFORD	
SUPERVISOR ID NO. 12018917		M.I. 4	
EVALUATION DATE 01-01-07		M.L. R	
TRAIN NO. 01910		FATHER'S LAST NAME WILLIAMS	
OPERATED FROM SJC		FATHER'S FIRST NAME WILLIAM	
OPERATED TO KFO		MATERIALS 4	
NO. OF ENGS. 1		NO. OF CARS 14	
IND.BRK. 2		P.C. 2	
WRIT. AUTH. 2		AIR 2	
SPECIAL INSTR. 2		SPEED 2	
WHT. AUTH. 2		SIGNAL 1	
SAFETY INSTR. 2		BLEND. BRK. 2	
AUTO. BRK. 2		TROUBLESHOOTING 2	
DYN. BRK. 2		OVERALL SCORE 2	
P.C. 2			
AIR 2			
SPEED 2			
SIGNAL 1			
BLEND. BRK. 2			
TROUBLESHOOTING 2			
OVERALL SCORE 2			
THROTTLE 2			
START 1			
STOP 2			
IND.BRK. 2			
SCHEDULE 2			
EQUIP. 2			
DYN. BRK. 2			
BLEND. BRK. 2			
TROUBLESHOOTING 2			
OVERALL SCORE 2			
SUPERVISOR'S COMMENTS			
<p>MR. HEDRICK IS A CURRENTLY EMPLOYED VEHICLE DRIVER. HE IS A SMOOTHE STARTER AND DRIVES AT A MODERATE SPEED. HE IS A GOOD DRIVER AND HAS BEEN WORKING FOR OVER 6000 HOURS ON THE ROAD. HE IS A GOOD DRIVER AND HAS BEEN WORKING FOR OVER 6000 HOURS ON THE ROAD.</p>			
AREA(S) NEEDING IMPROVEMENT			
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68 Stopping train

69 Maintaining schedule

KNOWLEDGE OF:

70 Assigned equipment

71 Troubleshooting procedures

72 OVERALL SCORE - See above for specific instructions regarding this item.

73-264 SUPERVISOR'S COMMENTS - This section must be completed in certain instances as noted above.

265-388 AREA(S) NEEDING IMPROVEMENT - This section must be completed in certain instances as noted above.



AMTRAK LOCOMOTIVE ENGINEER EVALUATION—FORM 1875

EMPLOYEE IDENTIFICATION NO.

015601910144517

OPTION (A,B,C, OR D)

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Page 20 of 28

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Block 3. **NOTICE OF PUNISHMENT.** Add address, phone or fax number. #:

100 Employee's home address, No:

111 OPERATION (A, B, C OR D) AND ACT (A - Process, C - Operation, D - Design)

122 EOC Employees Qualifications at time of Evaluation

133 EOC - Employee PE - Regular, E/F - Engineer, P - Pilot

144 BASE CLASSIFICATION Enter Employee's Classification

155 RAB ON Employee's Home Division

166 Western Division, 1 JBB, Conditioning Division, 200, New York Division

188 Address Division, 300, Boston Division

FIGURE 8A: INSTRUCTIONS AND CODES

NOTE:

When an employee receives a 3 or 4 rating in any field, specific procedures resulting in distinction factors are issued applicable to that particular classification. If an employee does not receive a 3 or 4 rating, then the following SUPERVISOR'S COMMENTS section must be completed.

An employee given an OVERTIME rating of 4 must be withheld from service until given 30 days of training or a formal presentation of plan(s) must be furnished to supervisor. This section must be completed if employee must complete a disciplinary action in Supervisor and receive an OVERALL evaluation rating of a 3 or 4.

KNOWLEDGE OF COMPLIANCE WITH:

63 Operating Rules

64 Special Instructions

65 Written Authorities

66 Safety Instructions

67 Traffic Procedures

68 Responsibilities of the Employee, Characteristics of the Job, Work Conditions

69 A. Use instructions

70 Skills required by Operating Rules, Supervisor Instructions, Workstation conditions

71 Standard Instructions

72 Operating Train Handling Ability involving use of:

73 Throttle

74 Differential gear

75 Automatic brake

76 Dynamic brake

77 Centered track

78 Skill/knowledge required while a

79 Starting train

80 Stopping train

81 Failure in performance

82 Knowledge of:

83 Ass. job, equipment

84 Troubleshooting procedures

85 OPERATOR'S COMMENTS - See also for specific accidents, injuries in certain instances as noted below

86 ARFAS/NCCDS IMPROVEMENTS - This section must be completed in certain instances as noted below

30-29 Supervisor's Employee Identification Number:	30-35 Rating on which Employee Evaluation was performed:
36-38 OPERATED FROM - Enter the location at which the evaluation was begun:	39-41 OPERATED TO - Enter the location at which the evaluation was ended:
42-45 TRAIN NO - Timetable sequence number of train:	46-49 ENGINE NO - Enter road locomotive, or Control Car Number:
50 MO. OF ENGS. - Enter total number of locomotives in train's consist:	51 PERSONNEL CONSIST OF AND HIGH RATING CHARACTERISTICS MUST BE NOTED IN SUPERVISOR'S COMMENTS section:
52-53 NO. OF CARS - Enter total number of cars in train's consist:	

USE THE CRITERIA IN ITEMS 6 THROUGH 12 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 5A THROUGH 72.



AMTRAK LOCOMOTIVE ENGINEER EVALUATION—FORM 1875

EMPLOYEE IDENTIFICATION NO.

1056070457

OPTION (A,B,C, OR D)

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Riskka NOTE: Print legibly. All entries should be checked - 3 or 4.

1-19 Employee's Identification #:

11 OPTION (A,D,G,OR D). A = ADD, B = Browse, C = Charge, D = Delete
12-13 OCC. Employee's Classification at time of Evaluation
14 ER = Engineer FE = Fireman EI = Engine Trainee

14-15 CREWBASE - Enter Employee's Crewbase
17-19 DIVISION-Employee's Home Division

100 - Warren Division 200 - Philadelphia Division
200 - Midwest Division 300 - Washington Division
300 - Boston Division

400 - New York Division
500 - Boston Division

20-29 Supervisor's Employee Identification Number

30-35 Date on which Engineer Evaluation was performed

30-38 OPERATED FROM - Enter the location at which the evaluation was begun.

30-41 OPERATED TO - Enter the location at which the evaluation was ended.

42-45 TRAIN NO - Trainable schedule number of train.

46-49 ENGR. NO. - Enter Lead Locomotive, or Control Car Number.

50 NO OF ENGS - Enter total number of locomotives in train's consist. If locomotive consist affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

51-52 NO. OF CARS Enter total number of cars in train's consist

USE THE CRITERIA IN ITEMS 9 THROUGH 12 FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

- 9 Enter a ZERO if category is not applicable (Does not apply to item No. 72)
- 10 Employee consistently demonstrates skill and knowledge above average
- 11 Employee fulfills all requirements for skill and knowledge. There may be a minor deficiency above or below expectations, but the general performance level results in safe and efficient train operation.
- 12 An employee with sufficient time and experience who shows shortcomings in knowledge and skill. This is applicable to an employee who is progressing satisfactorily, but is not yet fulfilling all position requirements.
- 13 Performance is fair, steady and does not exceed minimum job standards.

PERIODIC INSTRUCTIONS AND CODES

NOTE:

When an employee is given a 3 or 4 rating in any field, specific information regarding what corrective actions are deemed appropriate to eliminate the employee's deficiencies, and what the employee's deficiencies are, must be included in "SUPERVISOR'S COMMENTS", and in "REF-A(S) NEEDING IMPROVEMENT", respectively.

An employee given an OVERALL rating of 4 must be withdrawn from service until brought up to standard. A typical program of instruction must be fulfilled in order to accomplish this goal. Prior to returning to service, the employee must complete a qualifying run with a Supervisor, and achieve an OVERALL evaluation rating of at least 3.

KNOWLEDGE OF COMPLIANCE WITH:

- 53 Operating Rules
- 54 Special Instructions
- 55 Written Authorites
- 56 Safety Instructions
- 57 Radio Procedures
- 58 Requirements of the physical characteristics of the territory the train is operating over.
- 59 Air Brake Instructions
- 60 Speeds required by Operating Rules, Special Instructions, or operating conditions
- 61 Signal indications

ENROUTE TRAIN HANDLING ABILITY INVOLVING USE OF:

- 62 Throttle
- 63 independent brake
- 64 Automatic brake
- 65 Emergency brake
- 66 Blaster's brake
- 67 Chipping train
- 68 Stopping train
- 69 Maintaining speed limit

KNOWLEDGE OF:

- 70 Assigning equipment
- 71 Holdbacking locomotives
- 72 GENERAL SOURCE See items 60-73 for training areas relevant to this item.

- 73-74 SUPERVISOR'S COMMENTS - This section must be completed, except where indicated otherwise, for each item 53 through 72.
- 75-76 - THIS SECTION IS DELETED
- 77-78 - THIS SECTION IS DELETED



AMTRAK LOCOMOTIVE ENGINEER EVALUATION—FORM 1875

EMPLOYEE IDENTIFICATION NO. 1

OPTION (A,B,C, OR D)

OCC.

CREWBASE 10

FIRST NAME 11

M.I.

DIVISION 12

SUPERVISOR ID NO. 13

SUPERVISOR LAST NAME 14

FIRST NAME 15

M.I.

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Filed 05/01/2007

Document 84-4

Case 4:05-cv-05434-CW

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1-10

Employee's identification No

11

OPTION (A,B,C, OR D) A = Add, B = Browse, C = Change, D = Delete

12-13

OCC Employee's Qualification at time of Evaluation

14-16

ER = Engineer FE = Female ET = Engineer Trainee

17-19

DIVISION Employee's Home Division.

100= Western Division

400= Philadelphia Division

200= Midwest Division

500= New York Division

300= Washington Division

600= Boston Division

20-29

Supervisor's Employee Identification Number

30-35

Date on which Engineer Evaluation was performed

36-39

OPERATED FROM - Enter the location at which the evaluation was begun.

39-41

OPERATED TO - Enter the location at which the evaluation was ended.

42-45

TRAIN NO. - Timetable schedule number of train.

46-49

ENGINE NO. - Enter Lead Locomotive, or Control Car Number.

50

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

51-52

NO. OF CARS - Enter total number of cars in train's consist.

53

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

54

Date on which Engineer Evaluation was performed

55

OPERATED FROM - Enter the location at which the evaluation was begun.

56

OPERATED TO - Enter the location at which the evaluation was ended.

57

TRAIN NO. - Timetable schedule number of train.

58

ENGINE NO. - Enter Lead Locomotive, or Control Car Number.

59

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

60

Date on which Engineer Evaluation was performed

61

NO. OF CARS - Enter total number of cars in train's consist.

62

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

63

Date on which Engineer Evaluation was performed

64

NO. OF CARS - Enter total number of cars in train's consist.

65

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

66

Date on which Engineer Evaluation was performed

67

NO. OF CARS - Enter total number of cars in train's consist.

68

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

69

Date on which Engineer Evaluation was performed

70

NO. OF CARS - Enter total number of cars in train's consist.

71

NO. OF ENGS. - Enter total number of locomotives in train's consist. If locomotive consists affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

72

Date on which Engineer Evaluation was performed

73-264

SUPERVISOR'S COMMENTS - See above for specific instructions regarding this item.

265-388

AREAS NEEDING IMPROVEMENT - This section must be completed in certain instances as noted above.

FORM 1875 INSTRUCTIONS AND CODES

NOTE:

When an employee is given a 3 or 4 rating in any field, specific information regarding what corrective actions are deemed appropriate to eliminate the employee's deficiencies, and what the employee's deficiencies are, must be included in "SUPERVISORS COMMENTS" and in "AREAS NEEDING IMPROVEMENT", respectively.

An employee given an OVERALL rating of 4 must be withheld from service until brought up to standard. A formal program of instruction must be fulfilled in order to accomplish this goal. Prior to returning to service, the employee must complete a qualifying run with a Supervisor, and achieve an OVERALL evaluation rating of at least 3.

KNOWLEDGE OF/COMPLIANCE WITH:

53 Operating Rules

54 Supervisor's Instructions

55 Written Authorities

56 Safety Instructions

57 Radio Procedures

Requirements of the physical characteristics of the territory the train is operated over.

58 Air Brake Instructions

59 Specific required by Operating Rules, Section 6000, Part 6000, Conditions

60 Signal Indications

ENROUTE TRAIN HANDLING AUTHORITY INCLUDING USE OF:

62 Throttle

63 Independent brake

64 Automatic brake

65 Dynamic brake

66 Relaxed brake

SKILL/KNOWLEDGE EXHIBITED WHEN:

67 Starting train

68 Stopping train

69 Monitoring schedule

KNOWLEDGE OF:

70 Assigned equipment

71 Troubleshooting procedures

72 Other



AMTRAK LOCOMOTIVE ENGINEER EVALUATION—FORM 1875

EMPLOYEE IDENTIFICATION NO.

015161019101414517

OPTION (A,B,C, OR D) 10ON 7/11
ROGER (DS) 1000
R.R. 4TH PM
AVB OR #70
M.I. [R]

Page 26 of 28

OCC. ECRCREWBASE PIC 5DIVISION 1100EMPLOYEE'S LAST NAME HEDMANFIRST NAME CM.I. RNO. OF ENGS. 41NO. OF CARS 4

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Blocks (NOTE: Print legibly. All zeroes should be slashed - 0)

1-10 Employee's Identification No.

11 OPTION (A,B,C, OR D): A = Add, B = Browse, C = Change, D = Delete

12-13 OCC -Employee's Qualification at time of Evaluation

ER = Engineer FE = Fireman ET = Engineer Trainee

14-16 CREWBASE - Enter Employee's Crewbase

17-19 DIVISION-Employee's Home Division.

100= Western Division
200= Midwest Division
300= Washington Division
400= Philadelphia Division
500= New York Division

20-29 Supervisor's Employee Identification Number.

30-35 Date on which Engineer Evaluation was performed.

36-38 OPERATED FROM - Enter the location at which the evaluation was begun.

39-41 OPERATED TO - Enter the location at which the evaluation was ended.

42-43 TRAIN NO. - Timetable schedule number of train.

46-49 ENGINE NO. - Enter Lead Locomotive, or Control Car Number.

50 NO. OF ENCS. - Enter total number of locomotives in train's consist. If locomotives consist affected train handling characteristics, this must be noted in "SUPERVISOR'S COMMENTS" section.

51-52 NO. OF CARS - Enter total number of cars in train's consist.

USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

63 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

64 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

65 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

66 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

67 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

68 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

69 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

70 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

71 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

72 USE THE CRITERIA IN ITEMS 6 THROUGH 4 BELOW FOR ASSIGNING A PERFORMANCE LEVEL NUMBER FOR CATEGORIES 53 THROUGH 72.

FORM 1875 INSTRUCTIONS AND CODES**NOTE:**

When an employee is given a 3 or 4 rating in any field, specific information regarding what corrective actions are deemed appropriate to eliminate the employee's deficiencies, and what the employee's specific deficiencies are, must be included in "SUPERVISOR'S COMMENTS" and in "AREAS NEEDING IMPROVEMENT", respectively.

An employee given an OVERALL rating of 4 must be withheld from service until brought up to standard. A formal program of instruction must be initiated in order to accomplish this goal. Prior to returning to service, the employee must complete a qualifying run with a Supervisor, and achieve an OVERALL evaluation rating of at least 3.

KNOWLEDGE OF COMPLIANCE WITH:

53 Operating Rules

54 Special Instructions

55 Written Authorities

56 Safety Instructions

57 Radio Procedures

58 Requirements of the Physical Characteristics of the territory the train is operated over.

59 Air Brake Instructions

60 Specifics required by Operating Rules, Special Instructions, or operating conditions.

61 Signal indications

ENROUTE TRAIN HANDLING ABILITY INVOLVING USE OF:

62 Throttle

63 Independent brake

64 Automatic brake

65 Dynamic brake

66 Blended brake

SKILL/KNOWLEDGE EXHIBITED WHILE:

67 Starting train

68 Stopping train

69 Maintaining schedule

KNOWLEDGE OF:

70 Assigned equipment

71 Troubleshooting procedures

72 OVERALL SCORE - See above for scores, instructions regarding this item.

73-264 SUPERVISOR'S COMMENTS - This section must be completed in certain instances as noted above.

265-380 AREAS NEEDING IMPROVEMENT - This section must be completed in certain instances as noted above.

ATTACHMENT - EXHIBIT -4

PAMELA Y. PRICE, ESQ. (STATE BAR NO. 107713)
BERNADETTE A. RIGO, ESQ. (STATE BAR NO. 190272)
PRICE AND ASSOCIATES
1300 Clay Street, Suite 340
Oakland, CA 94612
Telephone: (510) 452-0292

Attorneys for Plaintiff
ABNER J. MORGAN, JR.

RECEIVED

1998 AUG -4 A 2:29

RICHARD W. WIEKING, CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABNER J. MORGAN, JR.

No. C96-03585 SI

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION dba AMTRAK, and DOES
1-10, inclusive,

Defendants.

**DECLARATION OF MERIOLA
GOTTHARDT IN OPPOSITION TO
DEFENDANT AMTRAK'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, FOR
SUMMARY ADJUDICATION OF
ISSUES**

DATE: AUGUST 28, 1998
TIME: 9:00 A.M.
PLACE: COURTROOM 4
HONORABLE SUSAN ILLSTON

I, MERIOLA GOTTHARDT, declare:

1. I worked for the National Railroad Passenger Corporation ("Amtrak") for approximately eight (8) years as an engineer. I worked at the Oakland Maintenance Yard ("the Yard") California throughout my employment at Amtrak. I make this Declaration on personal knowledge in opposition to Amtrak's Motion for Summary Judgment.

2. In approximately 1992, I heard Chuck Berg, a road foreman of engines, tell J.W. Deely ("Deely"), then Amtrak's Director of the California Corridor, that he was going to give a document to one of those "nigger bitches" to type. Deely did not reprimand Berg.

3. In approximately 1993, while standing outside of the main office at the Yard, I heard Deely state that the problem with these niggers is that after you train them, they

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DECLARATION OF MERIOLA GOTTHARDT (C96-03585 SI)

1 walk out on you.

2 4. On several occasions, I overheard Michael Bordenave, an Amtrak
3 Foreman, address and refer to black employees as "niggers."

4 5. I have complained to Deely regarding the use of racial slurs in the Yard.
5 Nothing was done in response to my complaint.

6 6. In approximately late 1994 or early 1995, I saw Bordenave and Abner J.
7 Morgan having a heated discussion. I heard Mr. Bordenave say that he was going to tell that Mr.
8 Morgan threatened him and they would believe him.

9 7. In approximately late 1994, Mr. Bordenave ordered me to use an engine
10 with no steps to move car trains. I informed him that this was a violation of federal law, which
11 could result in deaths. I also told Mr. Bordenave that if I got into trouble for following his order,
12 I would inform people that he gave me the order. Mr. Bordenave replied that if I did not follow
13 his order he will fire me for insubordination and that he would deny giving me the order if I got
14 into trouble for it.

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I declare under penalty of perjury under the laws of the State of California and the
United States that the foregoing is true and correct. If called as a witness in this matter, I could
and would testify competently to the facts stated herein.

Executed this 30th day of July, 1998 at Oakland, California.

Meriola Gotthardt
MERIOLA GOTTHARDT

ATTACHMENT - EXHIBIT -5

1 PAMELA Y. PRICE, ESQ. (STATE BAR NO. 107713)
 2 BERNADETTE A. RIGO, ESQ. (STATE BAR NO. 190272)
 3 PRICE AND ASSOCIATES
 4 1300 Clay Street, Suite 340
 5 Oakland, CA 94612
 Telephone: (510) 452-0292

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 8
 Attorneys for Plaintiff
 9 ABNER J. MORGAN, JR.

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10 1998 AUG -4 A 2:28

11 RICHARD W. WIEKING, CLERK
 12 U.S. DISTRICT COURT
 13 NO. DIST. OF CA.

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 ABNER J. MORGAN, JR.

18) No. C96-03585 SI

19 Plaintiff,

20)
 21 v.
 22)
 23) DECLARATION OF MICHAEL
 24) WILLIAMS IN OPPOSITION TO
 25) DEFENDANT AMTRAK'S MOTION
 26) FOR SUMMARY JUDGMENT OR, IN
 27) THE ALTERNATIVE, FOR
 28) SUMMARY ADJUDICATION OF
 ISSUES

NATIONAL RAILROAD PASSENGER
 CORPORATION dba AMTRAK, and DOES
 1-10, inclusive,

Defendants.

DATE: AUGUST 28, 1998
 TIME: 9:00 A.M.
 PLACE: COURTROOM 4
 HONORABLE SUSAN ILLSTON.

I, MICHAEL WIILIAMS, declare:

1. I currently work for Union Pacific Railroad Company (formerly "Southern Pacific"). I have worked in the railroad industry for a total of approximately nineteen (19) years. I make this Declaration on personal knowledge in opposition to Defendant's Motion for Summary Judgment.

2. I worked for the National Railroad Passenger Corporation ("Amtrak") for approximately six (6) years from October 1989 through October 1995 as a Car Inspector. I worked at Amtrak's Oakland Maintenance Yard ("the Yard"), California throughout my employment at Union Pacific and Amtrak.

63P12 DECLARATION OF MICHAEL WILLIAMS (C96-03585 SI)

1 3. Jerry Denton was one of my supervisors when I worked at Amtrak. I have
2 overheard Denton on numerous occasions tell "Nigger jokes." In approximately 1995, I
3 overheard Denton say "God damn Niggers."

4 4. I found racist notes and other texts exhibiting racial animus in my locker
5 three to four times a week. For example, in approximately 1995, I found a picture taped to a
6 string portraying a white Portuguese holding the chopped heads of black Africans.

7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct. Executed on Aug 1, 1998, at Oakland, California.

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11 Michael A. Williams
12 MICHAEL WILLIAMS
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ATTACHMENT - EXHIBIT -6

1 PAMELA Y. PRICE, ESQ. (STATE BAR NO. 107713)
 2 BERNADETTE A. RIGO, ESQ. (STATE BAR NO. 190272)
 3 PRICE AND ASSOCIATES
 4 1300 Clay Street, Suite 340
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 6 Telephone: (510) 452-0292

7 Attorneys for Plaintiff
 8 ABNER J. MORGAN, JR.

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1998 AUG -4 A 2: 23

RICHARD W. WIEKING, CLERK
 U.S. DISTRICT COURT
 NO. DIST. OF CA.

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 ABNER J. MORGAN, JR.

) No. C96-03585 SI

13 v.
 14 Plaintiff,

)
 15) DECLARATION OF JOE GEORGE IN
 16) OPPOSITION TO DEFENDANT
 17) AMTRAK'S MOTION FOR
 18) SUMMARY JUDGMENT OR, IN THE
 19) ALTERNATIVE, FOR SUMMARY
 20) ADJUDICATION OF ISSUES

21)
 22) Defendants.
 23)
 24)

) DATE: AUGUST 28, 1998
 25) TIME: 9:00 A.M.
 26) PLACE: COURTROOM 4
 27) HONORABLE SUSAN ILLSTON

28 I, JOE GEORGE, declare:

1. I have worked for Union Pacific (formerly "Southern Pacific") for approximately twenty (20) years as a laborer. I worked at the Oakland Maintenance Yard in Oakland, California throughout my employment at Union Pacific. I make this Declaration on personal knowledge in opposition to Defendant National Railroad Passenger Corporation's ("Amtrak") Motion for Summary Judgment.

2. I have been the Local Chairman of the National Conference of Firemen and Oilers for six (6) years.

3. Amtrak and Union Pacific employees have worked together at the Oakland Maintenance Yard ("Yard") since I started working at Union Pacific in 1978.

1 4. I have worked with Jerry Denton and R.D. Vandenburg in the past and
2 have observed them talk in a profane and rude manner to both Amtrak and Union Pacific
3 employees on several occasions. I requested Mr. Denton and Mr. Vandenburg to stop talking to
4 the employees in such a manner. I informed them that if I talked to them in such a manner, I
5 would be brought up on charges. Mr. Denton and Mr. Vandenburg did not respond to my
6 requests.

7 5. In approximately 1989, Amtrak contracted with Union Pacific to provide
8 services to Amtrak. Many Union Pacific employees transferred to Amtrak to work for a six year
9 period. I wanted to transfer to Amtrak because of better benefits. I would also be the most
10 senior person in my craft. After I put in the bid for the transfer, Mr. Denton threatened me by
11 stating that if I transferred to Amtrak, he would fire my "black ass."

12 6. In approximately June 1989, I was getting mustard from an Amtrak train,
13 a common practice in the Yard. Mr. Vandenburg saw me getting the mustard and a
14 confrontation ensued. When I subsequently saw Mr. Vandenburg, I apologized for my part in
15 the incident. He replied, "Now your black ass wants to apologize." I was taken aback and did not
16 know what to say. I received a three day suspension for the incident for being out my work area.
17 I again ran into Mr. Vandenburg after my suspension and he made the following comment:
18 "Your black ass got a three day suspension."

19 7. In approximately 1991 or 1992, one of the Amtrak employees I
20 represented reported to Mr. Denton that she was physically threatened by one of her supervisors,
21 Bob Modick. Mr. Modick is white. No investigation was conducted concerning this employee's
22 complaint.

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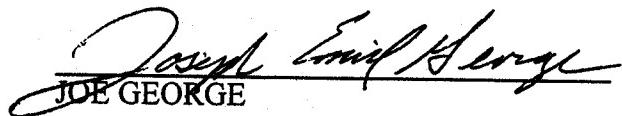
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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. Executed on 8-31, 1998, at Oakland, California.
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Joe George
JOE GEORGE

ATTACHMENT - EXHIBIT -7

1 PAMELA Y. PRICE, ESQ. (STATE BAR NO. 107713)
2 BERNADETTE A. RIGO, ESQ. (STATE BAR NO. 190272)
3 PRICE AND ASSOCIATES
4 1300 Clay Street, Suite 340
5 Oakland, CA 94612
6 Telephone: (510) 452-0292

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11 Attorneys for Plaintiff
12 ABNER J. MORGAN, JR.

RECEIVED

1998 AUG -4 A 2:29

RICHARD W. WIEKING, CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 ABNER J. MORGAN, JR.)
12 Plaintiff,)
13 v.)
14 NATIONAL RAILROAD PASSENGER)
15 CORPORATION dba AMTRAK, and DOES)
16 1-10, inclusive,)
17 Defendants.)
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No. C96-03585 SI

**DECLARATION OF ARTHUR
ELWOOD CONLEY IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

I, Arthur Elwood Conley, declare:

1. I worked for Union Pacific (formerly "Southern Pacific") for eighteen (18) years as a pipefitter and a temporary foreman. I make this Declaration on personal knowledge in opposition to National Railroad Passenger Corporation's ("Amtrak") Motion for Summary Judgment.

2. I worked for Amtrak from approximately 1989 to 1992 as a pipefitter and a temporary foreman. I was the temporary Car Foreman for the Mechanical Department, Roundhouse Foreman, and Foreman of the Private Rail Cars.

3. In 1991, I had two meetings with then House Representative Barbara

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Boxer. One of those meetings took place in Amtrak's Oakland Maintenance Yard. I complained to Barbara Boxer regarding the employment conditions at Amtrak Oakland Maintenance Yard.

4. R.D. Vandenburg displayed his displeasure and offense at my attending the meetings with Barbara Boxer. Within days after the meetings, Mr. Vandenburg told me that he wanted to have a meeting with me. He then asked whether I would need to go to Barbara Boxer to cry about anything.

5. In 1992, I was terminated by Amtrak for reasons that are still not clear to me.

6. I have heard Amtrak management including R.D. Vandenburg, Raymond Borge, and Jerry Denton make racial slurs. I remember Mr. Borge on several occasions refer to African American employees as "shuffle-butt niggers." Mr. Borge even imitated the way he perceived African American employees walked to explain what the term meant. On several occasions, Mr. Vandenburg and Mr. Denton were present when Mr. Borge made these comments and imitations.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 28th, 1998, at Oakland, California.

Arthur Elwood Conley
ARTHUR ELWOOD CONLEY

ATTACHMENT - EXHIBIT -8

PAMELA Y. PRICE, ESQ. (STATE BAR NO. 107713)
BERNADETTE A. RIGO, ESQ. (STATE BAR NO. 190272)
PRICE AND ASSOCIATES
1300 Clay Street, Suite 340
Oakland, CA 94612
Telephone: (510) 452-0292

Attorneys for Plaintiff
ABNER J. MORGAN, JR.

ORIGINAL
FILED

AUG 6 1998

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABNER J. MORGAN, JR.

) No. C96-03585 SI

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION dba AMTRAK, and DOES
1-10, inclusive,

Defendants.

**AMENDED DECLARATION OF
ABNER J. MORGAN, JR. IN
OPPOSITION TO DEFENDANT
AMTRAK'S MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION OF ISSUES**

DATE: AUGUST 28, 1998

TIME: 9:00 A.M.

PLACE: COURTROOM 4
HONORABLE SUSAN ILLSTON

I, ABNER J. MORGAN, JR., declare:

1. I am the Plaintiff in the above-entitled action. I make this Declaration on personal knowledge in opposition to Defendant National Railroad Passenger Corporation's ("Amtrak") Motion for Summary Judgment Or, in the Alternative, for Summary Adjudication of Issues.

2. I worked for Amtrak for approximately five (5) years. I worked at the Oakland Maintenance Yard ("the Yard") in Oakland, California throughout my employment at Amtrak.

3. I received training in the electronics field from the United States Air

1 Force and had six years of experience as an Electrician prior to working for Amtrak.

2 4. I was hired on August 15, 1990. Upon being hired, Amtrak paid me
 3 \$9.69 an hour. R.D. Vandenburg ("Vandenburg"), former Facility Manager at the Yard, told me
 4 that he would increase my pay to the Electrician rate after my probationary period.

5 5. Several months later, I discovered that I was not hired as an Electrician
 6 but as an "Electrician Helper." I was the only Electrician Helper at the Yard and in Amtrak's
 7 Western Division. Despite performing the duties of an Electrician for approximately two years,
 8 my position was not reclassified and my pay was not increased until April 1992. Amtrak hired
 9 other less qualified Caucasian Electricians between the beginning of 1991 and April 1992 and
 10 paid them at an Electrician's rate. During the five (5) years of my employment with Amtrak, I
 11 was one of the five African-American Electricians assigned to the Yard.

12 6. Throughout the course of my employment with Amtrak, I have been
 13 subjected to a continuous pattern of discrimination on the basis of my race, and retaliation for
 14 complaining regarding the racism. (A true and correct copy of the EEOC Charge and Affidavit I
 15 filed on February 27, 1995 is attached hereto as Exhibit A.) On May 25, 1993, I wrote to
 16 Amtrak's EEO regarding the continuing racial discrimination I was experiencing at the Yard. (A
 17 true and correct copy of my May 25, 1993 letter is attached hereto as Exhibit B.) On May 30,
 18 1993, I wrote to Amtrak's EEO to complain about Amtrak management's continuing
 19 discriminatory conduct including being reassigned to the graveyard shift. (A true and correct
 20 copy of my May 30, 1993 letter is attached as Exhibit C.)

21 7. In approximately 1991, Jerry Denton, an Amtrak General Foreman at the
 22 Yard, ordered Eddie Harper, an African-American employee to search for a bomb with a
 23 flashlight. Mr. Harper was a carman and not a bomb expert.

24 8. On February 25, 1991, Vandenburg and Denton ordered me to go into a
 25 meeting because I called in sick the night before. I refused to go into the meeting without a
 26 union representative. Vandenburg and Denton charged me with a Rule L violation. On
 27 March 22, 1991, Amtrak terminated me for this alleged Rule L violation.

28 9. After I filed a grievance and several months of not receiving pay, Amtrak

reinstated me on June 16, 1991. My termination was replaced with a ten (10) day suspension.

10. On August 13, 1991, I made a written request to enter Amtrak's apprenticeship program to its personnel office in Los Angeles. Amtrak did not formally respond to my request. Thereafter, on August 17, 1991, Vandenburg told me that he ran the Yard and that I stood "a snowball's chance in hell of becoming an electrician."

11. During the course of my employment, I complained repeatedly about the blatant racism and pattern of racial discrimination by Amtrak's managers at the Yard. On October 4, 1991, I submitted a written complaint to Amtrak's Equal Employment Opportunity (EEO) office. I never received a formal response. (A true and correct copy of my letter to EEO dated October 4, 1991 is attached as Exhibit D.)

12. Within days, on October 16, 1991, Denton charged me with a Rule L Violation. I protested strenuously that his action was racially motivated. I complained again in writing.

13. In late 1991, I and several other Amtrak employees from the Yard met with Barbara Boxer to complain about employee morale and discriminatory conditions at Amtrak. In a letter dated January 22, 1992, Barbara Boxer demanded that Amtrak commence investigation into the employment conditions at the Amtrak's Yard.

14. From November 1991 to December 19, 1994, I have made several requests to see my personnel file. (Attached as Exhibit E are true and correct copies of my requests.) On December 13, 1991, Vandenburg placed a letter of counseling in my work file without my prior knowledge, accusing me of being argumentative and threatening.

15. Vandenburg denied each request that I made to see my personnel file except for one time when I brought in my union representative to demand that I have a right to review my file. I have never been given any Request Form to review of my personnel file.

16. In response to Congresswoman Boxer's request, Amtrak's General Inspector, Fred Weiderhold, visited the Yard on three separate occasions in 1992. I personally met with Mr. Weiderhold. Following my meeting with Mr. Weiderhold, I tried repeatedly to bring the continuing discriminatory and retaliatory practices at Amtrak to his attention. On

Case 4:05-cv-05434-CW Document 84-9 Filed 05/01/2007 Page 5 of 35
1 September 23, 1992, I wrote a letter to Mr. Weiderhold regarding a September 17, 1992 meeting
2 with Vandenburg and Borge wherein I was counseled for alleged absenteeism. I did not receive
3 a response. (A true and correct copy of my September 17, 1992 letter is attached as Exhibit F.)

4 17. On September 17, 1992, Vandenburg and Raymond Borge, an Amtrak
5 Foreman, counseled me for absenteeism. Vandenburg wrote to L.W. Bullock, Vandenburg's
6 supervisor and Amtrak's General Superintendent of the Western Division, to inform him to
7 report that my absenteeism problem was in part due to my taking time off to take care of my son,
8 who attempted to commit suicide.

9 18. On September 19, 1992, Mike Fabian, an Amtrak Foreman at the Yard,
10 ordered me to clean up the tar from Track 6. This was outside of my craft and not in my job
11 description.

12 19. On November 29, 1992, Earl Geske, an Amtrak Foreman at the Yard,
13 charged me with a Rule L violation for not picking up all of the tie wraps within a two mile
14 radius within my eight hour shift. This task was outside of my craft and not in my job
15 description. Nonetheless, I picked up the wraps, which are small pieces of wire like the ties
16 used on plastic bread loaf wrappers, until it got too dark for me to see them. I asked Mr. Geske
17 why he wrote me up when he watched me pick up tie wraps until it was dark. It was literally
18 impossible for me to pick up all of the wraps. He replied that he was only doing what they told
19 him to do. When I asked whether Vandenburg was the one who gave him the order, he nodded
20 his head in confirmation.

21 20. On April 26, 1993, Denton issued me a written counseling for alleged
22 absenteeism.

23 21. On May 13, 1993, I requested Vandenburg to change my hours
24 temporarily in order to care for my son who is handicapped and has a seizure disorder while my
25 family and I went on a trip to Boston. Alternatively, I requested Vandenburg for a leave of
26 absence for one day in addition to using my regular vacation. Vandenburg summarily denied
27 my requests.

28 22. On May 21, 1993, I had a telephone conference with Vandenburg

1 regarding why my name was taken off the list of people who were going to receive HVAC
2 training. Vandenburg told me that I did not have the mental capacity for such training.

3 23. On May 28, 1993, my job was abolished and I was reassigned to
4 graveyard shift.

5 24. On July 14, 1993, I was charged with a Rule O violation and suspended
6 for fifteen (15) days for taking an extra vacation day to care for my son who is handicapped and
7 has a seizure disorder while my family and I went on a trip to Boston. Following a lengthy
8 union grievance, Amtrak settled the dispute in November 1994, and I received back pay and the
9 suspension was ordered expunged from my file.

10 25. On October 13, 1993, I was charged with allegedly violating Rule F-1 and
11 F-3 by making improper remarks to a union representative. Ken Phillips, an Amtrak employee,
12 overheard the conversation. After an investigatory hearing in December 1993, I was found not
13 guilty of the charges which were ordered expunged from my file. Vandenburg did not comply
14 with the expungement order.

15 26. On October 14, 1993, Vandenburg assaulted me by placing both hands on
16 my shoulders and forcing my upper torso to my knees. I reported the incident to the police.
17 Amtrak never investigated the matter.

18 27. On October 21, 1993, I complained to Amtrak's EEO regarding
19 Vandenburg assault. (A true and correct copy of my October 21, 1993 letter is attached hereto
20 as Exhibit G.) I was never interviewed or contacted by EEO.

21 28. In December 1993, Louis Bellotti, an Amtrak Foreman at the Yard,
22 canceled a training scheduled for me without any explanation.

23 29. On January 14, 1994, Bellotti and Denton required me to bring a doctor's
24 note for one day's sickness. This requirement was not included in Amtrak's sick leave policy. I
25 lost three (3) days pay.

26 30. On January 18, 1994, I complained to Amtrak's EEO regarding the
27 cancellation of the training. I did not ever receive any response to my complaint. (A true and
28 correct copy of my January 18, 1994 complaint is attached hereto as Exhibit H.)

1 31. In June 1994, my pay was docked for jury duty in violation of the Union
 2 Contract.

3 32. I had the right to be paid for days that I served on jury duty pursuant to
 4 the Agreement Between the National Railroad Passenger Corporation And Its Employees
 5 Represented By The International Brotherhood of Electrical Workers ("Agreement"). Rule 17
 6 states that "an employee will not be required to work on his assignment on days on which jury
 7 duty...is scheduled to begin...within four hours of the...ending of his assignment." (A true and
 8 correct copy of Rule 17 of the Agreement is attached hereto as Exhibit I.)

9 33. In order to receive pay for jury duty, I had to turn in the check that the
 10 court gave me. I attempted to turn in my check for my jury duty on January 30, 1995 to
 11 Foreman Markar. He refused to take it. I still have the original check. (A true and correct copy
 12 of the "Statement of Appearance for Jury Duty" is attached hereto as Exhibit J.)

13 34. On September 9, 1994, I was charged with a Rule L violation for failing
 14 to complete work assignments on two train cars. One of the cars was assigned to George Guse,
 15 a Caucasian Amtrak Electrician. Guse was not charged with any Rule violations. I was
 16 suspended for fifteen (15) days.

17 35. During Amtrak's investigatory hearing into my 1994 suspension, I saw
 18 the hearing officer, Carlos Hernandez, and the charging officer, Ray Borge, arrive at the hearing
 19 in the same Amtrak vehicle.

20 36. In 1995, my rest days or days off were Tuesdays and Wednesdays. I
 21 worked the third shift from 12:00 a.m. to 8:00 a.m.

22 37. I have not been paid for serving jury duty on January 30, 1995.

23 38. On February 4, 1995, my supervisor, Michael Bordenave told me that all
 24 he would have to say is that I threatened him and they would believe him. I did not at any point
 25 threaten Mr. Bordenave. Bordenave reported that I threatened him to Denton.

26 39. Thereafter, Denton ordered me to go into his office. I asked for a union
 27 representative, and was denied. I then asked if co-worker Michael Shaw could be my witness.
 28 Denton responded by ordering everybody to leave the main office, and screamed at me to get my

"black ass" into his office. I refused to go into Denton's office because I did not have union representation or a witness, and was highly offended by Denton's racist remark. I was charged with a violation of AMTRAK's Rules and terminated.

40. During the Investigatory Hearing into my termination, the Charging Officer, Dustin Davis, accompanied the Hearing Officer John Eschenbach to and from the hearing.

41. Notwithstanding my numerous and repeated complaints to Amtrak's EEO office, I was never interviewed by any Amtrak EEO officer regarding my discrimination complaints against the managers at the Yard. Throughout my employment, I only had cursory conversations with these EEO officers and no real investigation of my complaints was ever made. Additionally, when a response was made to my complaint there was always a delay of at least six (6) months.

42. In November 1994, Robert Craven, a white Amtrak, Electrician, fabricated that while in the men's locker room he overheard a conversation I had with my wife wherein I allegedly said that I would wait at the gate to assault Bordenave. The nearest telephone that I could have used was approximately one hundred (100) yards away from the locker room.

43. A few days before Mr. Craven made the false statement, he referred to Luerean Butler as a "black bitch." I reprimanded him for making such a racist comment.

44. The racist comments by Amtrak management; repeated disciplinary actions; continuous harassment by Amtrak management; and the discriminatory way Amtrak management treated me and other African-American employees created a hostile environment at Amtrak.

45. I have been retaliated against by AMTRAK management by instituting disciplinary actions against me whenever I reported the discrimination that existed at the Yard.

46. When I filed my EEOC Charge, I was not represented by counsel, nor did I receive the assistance of an attorney. I have no legal training.

47. As a consequence of AMTRAK's discriminatory and retaliatory actions, I

had been deprived of the opportunity to earn a livelihood and provide for his family. I have suffered anxiety and extreme emotional distress.

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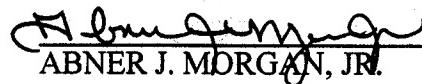
PRICE AND ASSOCIATES

1300 CLAY STREET, SUITE 340
OAKLAND, CA 94612
Telephone (510) 452-0292

063P20

I declare under penalty of perjury under the laws of the State of California and the
United States that the foregoing is true and correct. If called as a witness in this matter, I could
and would testify competently to the facts stated herein.

Executed this 6 day of August, 1998 at Oakland, California.


ABNER J. MORGAN, JR.

LAW OFFICES
PRICE AND ASSOCIATES
1300 CLAY STREET, SUITE 340
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1063P20

AMENDED DECLARATION OF ABNER J. MORGAN (C96-03585 SI)

CA DEPT FAIR EMPLOYMENT & HOUSING

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) Mr. Abner J. Morgan, Jr.		HOME TELEPHONE (Include Area Code) (510) 582-3684
STREET ADDRESS 2984 Pickford Way, Hayward, CA 94541		CITY, STATE AND ZIP CODE DATE OF BIRTH 03/01/53
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)		
NAME Amtrak	NUMBER OF EMPLOYEES, MEMBERS Cat C (201-500)	TELEPHONE (Include Area Code) (510) 645-4625
STREET ADDRESS 250 Wood Street, Oakland, CA 94621	CITY, STATE AND ZIP CODE	COUNTY 001
NAME	TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		DATE DISCRIMINATION TOOK PLACE EARLIEST LATEST / / 02/17/95 <input type="checkbox"/> CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)).

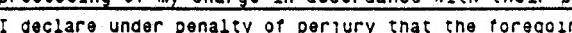
I am an Electrician on the night shift and have worked for Respondent since August of 1990. In 1991, I started protesting discriminatory treatment of myself and other Black employees of Respondent. Since that time I have been subjected to retaliation. Most recently the following retaliatory acts occurred. In October of 1994, I was denied updated refrigeration and air conditioning training. In December of 1994, I was access to my work record. In February of 1995, I was suspended without pay and brought up on charges of threatening and using profane language against my Supervisor and the General Foreman, both of whom are white. In early February of 1995, my pay was docked for days I served on jury duty.

I allege that the above employer has and is continuing to discriminate against me because of my race, Black, and because I have protested discriminatory actions made unlawful under Title VII of the Civil Rights Act of 1964, as amended.

RECEIVED

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EEOC - OAKLAND

<input type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary for State and Local Requirements)
I declare under penalty of perjury that the foregoing is true and correct.	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
 Date 2-27-95	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
Charging Party (Signature)	

Date 7-2, 1983

Charging Party (Signature)

FILE COF

EXHIBIT A

STATE OF CALIFORNIA

CITY/COUNTY OF Hayward/Alameda

CASE NAME Morgan, Jr. vs Amtra

CASE NUMBER 376950209

AFFIDAVIT

I, Asher J. Morgan, Jr. being first duly sworn upon my oath affirm and hereby say:
 (Name)

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 41 years of age, my gender is Male (sex) and my racial identity is Black (race)

I reside at 2984 Pickford Way (Number/Street)

City of Hayward, County of Alameda

State of CA, Zip Code 94541.

My telephone number is (including area code) (510) 582-3684.

My statement concerns Amtrak (Name of Union/Company/Agency) which is

located at 250 Wood Street (Number/Street)

in Oakland (City) CA (State) 94621 (Zip)

My job classification is (if applicable) Electrician (job title)

My immediate supervisor is (if applicable) Mike Bordenave, Foreman (Name) (job title)

I have been employed with Respondent since August 12, 1990 and am currently an Electrician on the night shift. On an ongoing basis I have written and filed several complaints of racial discrimination against Respondent. The company has made attempts to fire me on several occasions because of the complaints I have made. The last time they tried to fire me was in March of 1991. In October of 1993, I filed the most recent complaint.

On February 7, 1995, I was pulled out of service and suspended pending investigation due to alleged violation of company Rules of conduct. I am accused of threatening the Foreman, Mike Bordenave and the General Foreman, J. Denton, both of whom are White males. I am also accused of using profane language. These are some of the same management officials I have complained about in the past with respect to their racist attitudes towards me and other minority employees. These charges are no more than a continued pattern of harassment and retaliation. Glen Fisher, a White Electrician has cursed at Mike Bordenave and he has not been disciplined. This occurred in January of 1995 at a safety meeting in front of multiple witnesses. Luke LNU, a Carman cursed Mike Bordenave and he has not been disciplined. This also occurred in September of 1994 and January of 1995. Luke was not disciplined. Greg

AJM/JR Page 1 of 2
 (initials)

STATE OF CALIFORNIA
CITY/COUNTY OF Hayward/Alameda

CASE Morgan, Jr. vs Amtra
CASE NUMBER 376950209

AFFIDAVIT (cont.)

Huntington has also cursed Bordenave without being disciplined. The witness statements submitted on my behalf indicated that I was not guilty of the charges against me; yet, I was suspended without pay and made to go through a formal investigation.

On February 17, 1995, a hearing was held on the matter of the charges. Both the Hearing Officer and the Charging Official came to the meeting together in one car. It was evident during the meeting that they were in agreement that I was going to lose. The results of the hearing are due March 3, 1995.

At the hearing, I presented the company with a check from when I served on jury duty. They refused to take it without explanation even though they docked my pay for this time away from work.

I have learned that individuals who testified on my behalf at the hearing are starting to be harassed. Michael Shaw, Coach Cleaner, Ira Turner, Coach Cleaner (510)638-0354, Greg Huntington (707)763-9370, J.T. Johnson, Laborer and Joyce Judkins (510)569-9219.

In October of 1994, Ray Borge, Facilities Manager called an Electrician Trainer, Gary Breborn at home and advised him not to train me. This was update training on air conditioning and refrigeration. I do not have Gary's home telephone number; however, he is still employed by the company and has advised me that he will testify to the truth if asked. I was the only Electrician excluded from the training. One other Black Electrician received the training.

I have also been denied opportunity to see my work record. My most recent request and rejection was in December of 1994.

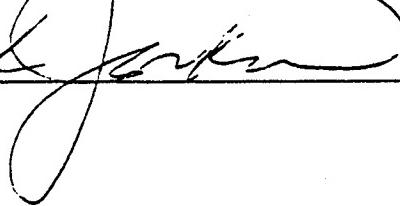
I allege that the above employer has and continues to discriminate against me because of my race, Black, and because I have openly complained verbally and in writing about discriminatory practices in the workplace.

I have read and had an opportunity to correct this Affidavit consisting of handwritten typed pages and swear that these facts are true and correct to the best of my knowledge and belief.



Subscribed and sworn to before me

this 27 day of February 1995



Date: May 25, 1993
 To: J Denton/R.D.Vandenburge EEO Officer
 From: Abner J. Morgan
 Subj: Complaint of Disclamation
 Amtrak Officer Vandenburge/Denton
 Date of offence 5/14/93

I have taken offense to your blatant acts of selective prosecution. It has manifested itself into an act of retaliation against those of color as Abner Morgan and Leroy Delaney. These acts seem to occur around the times we question the way those suspected practices are used for promotion, training schools, job assignments, and unwarranted prosecution. As I stated in the meeting, I know what it feels like to be singled out. For example, when Abner Morgan was the only person given a letter of counseling miss stating the facts. Mr. Gesky watched me pick up tie wraps until it was dark. I could not believe it when he wrote that I did not pick up any. Again, these acts happen after I had submitted a request to view and get a copy of my work record. My many requests will show proof that I have suspected that you have directed your manager to selective unwarranted prosecution of Abner Morgan.

I witnessed Vandenburge destroy the letters that were in my personnel file. These letters were there and would prove that I was doing Journeyman work, but being paid as a helper. Now because of this, Vandenburge refuses to let me view or get copies of the things in my file. I suspect that there are some negative things in my file.

Now I have really experienced the ultimate act of discrimination and what seems to me an admit of honest feeling and the calculated and direct discrimination to deny Abner Morgan Knowledge. Knowledge that I have been in quest for from day one. Knowledge that had been Promised. Knowledge that would allow me to complete my job with better efficiency and confidence. This knowledge that has been given to fellow employees who had only been hired three weeks on the job. I have worked nine straight weeks of Sundays in a row by myself so that others could obtain this knowledge. Now that it is time for Abner Morgan to attend school, I was informed by Vandenburge "you want me to answer your question honestly, it was my decision, you don't have the mental capability to pass the test." I was astounded, but not surprised by Vandenburge's answer to a direct question because this is not the first time I have witnessed Vandenburge's honest intent to intervene when it comes to Abner Morgan obtaining knowledge.

1. Abner Morgan was on the list to attend the Air Conditioning Freon recovery systems school with the second-set employees.
2. Vandenburge took Abner Morgan's name off the list, why ?
3. I have tried in vain to talk to Vandenburg. I have voice my concerns. I revealed to him personal family matters that have been part of jokes.

EXHIBIT B

4. I put in for a leave of absence, but it was given no consideration.

I feel that Vandenburge has given me the ultimatum to either put my son in danger or put my job on the line. I know with the new family leave bill that was signed by our President, something can be worked out.

Sincerely,

Abner James Morgan, Jr



May 30, 1993

To: SEO officer
From: Abner J Morgan
Subject: Retaliation From EEO Complaint
Discriminating Official R D Vandenburgh

Mr. Rollins:

I have endured countless of racial acts of discrimination from Vandenburge. Prior to May 15, 1993 I have not filed an EEO complaint, since then I have experienced unbearable amounts of humiliation, verbal abuse, and retaliation. For example:

1. On May 21, 1993, I talked to Vandenburg on the phone and asked why I was taken off the list to attend the AC school. I was told by Vandenburg that "I did not have the mental capabilities to finish the school."

I had been on the original list to attend the second session of classes for five months. Vandenburg took my name off the list and replaced it with two other employees. After I filed my recent EEO complaint, I talked to Fred Weiderhold, and explained this situation to him. Two days later, the acts of reprisal began.

- On Monday, May 24, 1993 Vandenburgh denied my recent leave of absence with no explanation or submitted Leave of Absence with no explanation or consideration. The importance of this Leave of consideration. The importance of this Leave of absence was not even considered by Vandenburgh. When I asked for the Employee Assistance Program (EAP) phone number, it took my supervisor all the way up to Vandenburgh's four days to give me a phone number so that I could talk to someone who could help me. When I questioned General Foreman, Gerry Stevens, why he did not do his job as manager of plant safety and protection, he responded that he did not know what I was talking about.

May 26, 1983. I was humiliated in front of fellow employees at a Safety Luncheon by Vandenburgh. As I was leaving, I thanked fellow employees and management for the lunch and told them that they deserved this lunch. Vandenburgh then proceeded to verbally reprimand me in front of the employees for not using the words "earned the lunch"

EXHIBIT G

I feel as if these blatant acts of discrimination, humiliation and intimidation should not be tolerated by Amtrak. It has been well documented, that the behavior and the practices used to discipline employees has been questionable, to say the least.

I feel that Vandenburgh has caused my family and myself great pain by his show of hatred toward my outspoken and strong personality. I do know that Amtrak has rules against these things, and I would like them implemented to show that this type of discrimination cannot be tolerated in an organization in the 90's.

Help,

July 22, 1992

... *in the interest of our union*

To my union, Amtrak Local 11, Congress Del Norte

I have work at Amtrak Oakland Maintenance yards for 15 months. In those 15 months it has been become so painful to watch my fellow minorities employees and myself be subjected to a onslaught of wrongful firings, blatant racism, Union contract violations and terrible abuse by a group of unsentive power men (White Managers) I name these Managers Vandenburg, Dent Coleman, Boese. Because I want them to face these Adler I do not want them to say the so unknown ~~person~~ person made these accusations. My fellow minority employee will give their own accounts and I will only ~~say~~ talk about my self. I also use the word White managers because Oakland Maintenance yards has no Black Managers.

1) On March 22 1991 I was fired because I would not go into a MEETING with three managers Vandenburg, Dent Coleman. So the charge was not obey a doctor's order. My job was awarded back to me after 6 months and pay was restored.

2) On or about March I wrote Amtrak a request to go to there school for an Electric Apprentice I told had explain to them that I had over 10 yrs. electrical Back and that I had performed the duties of A Journeyman Electrician at Amtrak and only receive the pay of a ~~new~~ electrician helper I was given a test along with other employees half way thru the test

(E28) 3pg told that I did not score high enough my tests were terminated. When I asked about my test scores they said to go about my test scores they said to Mr. Perrault at the Los Angeles office to Boxer (91)

I did write Mr Pencival on Aug 13 1991
Mr Pencival never wrote ~~me~~ me back The
Reply came from Vandenburg on Aug 17, 1991
Jewellburg Call me into the outer office
and said quot "you wrote ~~Pencival~~ Pencival
in LA WE I will tell you something MR
you STAND A SNOW BALL charge in Hell
before you become an electrician here.
I told you I run this office. WE gave
you a test and you didn't pass it." I then
ask that what they said. What was
my score. I would like to know where
I score low so that I may study it
for the next time. He then name other
employee that he would send before
me. I then walk out of the office and
ask other employee did they hear it
they reply yes.

3) When I was hired on at Amtrak
numbers told me they would bring me in
as a helper because if I come in as a
journeyman I would make less money
and than after growth they could
change me to a Journeyman. My experience
as all documented They have a copy of
me all. They return them to me on
about March I ~~believe~~ they may
taken them from my folder to
obstructate the paying me helper pay.

4) They Amtrak has only one Electrician
per at oakland That ME And A SAR AS
know I am the only one In the system
I have hire another Electrician A Journeyman
do not know his Qualification ~~but~~ But I do
now he is white and had no Amtrak experience

I do have Amtrak exprence I have work doing Electric Joneerman Work and ~~the~~ the log books from Aug 15, 1990 to March 22 1991 will provc that I have Repair Replace Rework and modifie Amtrak Equipment with out help. So what is there reason for not letting me Become a Full Joneerman or send me to the Eletronic School

You may ask Did I seek help yes
I call Steve Tolackson the Amtrak EEO Officer In Cago and he told me he felt that it was not a EEO problem So ~~is~~ I ask you Who do I talk to to get this thing scoule

As I write this complaint I know that these managers that I have name will retaleyke Stay tune

Oct 14, 1991

Help
Hanphy

To Vandenburg

From Abner J Morgan

Sbj: Request to see personal Records

Date Nov 16, 1991

Time 3:00 PM

when I came to work today I went to
Gen Forman S Coleman and ask to see my personal
Records. Mr Coleman Said No when I ask why He
Said he had no key. I then ask what were
the procedure to see my records. He said put
it into writing.

Abner J Morgan
SSN-86-4549

Var,

What I told Morgan was that I
didn't have the key to the file -
He asked "Do I need to put it in writing?"
I told him that would be good
this is what he gave me.

Abner J Morgan

D

EXHIBIT E

January 24, 1993

To: R. D. Vandenburg
From: Abner J Morgan
Subject: Request To see Personal Records

I gave my general foreman E Geskie copy of a request to view and get a copy of my personal records. This request was made in Dec. 1, 1992 and as of this date I have not gotten a response.

Your attention to this matter would be appreciated
Abner J Morgan

cc IBEW

Abner J Morgan

Mr. Morgan:

The proper procedure to review your personal records was posted on the bulletin board. I'm sure if you follow the rules you will get what you want.

D 000702

13

May 21, 1993

May 13 1993

Mr. Vanderburg
AMTRAK

Dear Mr. Vanderburg:

I am hereby requesting your considering in changing my hours from June 24th until July 5, 1993 to be 9:00 to 5:00 p.m. My family is taking a vacation and I must be available to care for my disabled son during that time period. He is in a program from 9:00 to 5:00 monday thru friday. Because of his seizure disorder we can not find the proper personal to handle him other than the time that I have stated. This is one of the family issue that has been discuss and this is one of the time that my family need me. I will not leave my son in the hands of anyone that is unquality or dose not have the confidence of my family.

If you can not grant my request here are some other things that can be concidered.

1. I have one week and oneday personal leave left the other day, s can be leave of absent

2. You can consider this as a request for leave of absent for the day, stated with out pay

I request that this be handly by you Mr. Vanderburg THIS LETTER IS FOR THE FACILTY MANGER OR ABOVE. THIS IS MY PERSONAL BUSINESS.

Just like Amtrak is a team The Morgan Family is a team

YOUR ANSER IN A TIMELY PERIOD WOULD BE GREATLY APPRECIATED
THE MORGAN FAMILY

c:\vanderburg\2

Amtrak

To Personal
From Abner J Morgan
Date 12-16-94
Review of Personal File

I Abner Morgan am requesting to view my personal work/personal file kept at Amtrak - A office. I have been told by RD Handenburg that there is no form for this request. Is so let this letter serve as an official form and respectfully ask for a date and time that my IBEW representative and myself can review and get copy of and things that we feel should not be in my file.

Anticipating your timely reply
Thank you

Abner James Morgan Jr
OAKLAND Maintenance YARD
Electrain
SSN 556-86-4549

Home
2984 Pickford Wy
Hayward CA 94541
510.582-3684
0000960

CC IBEW
EEOC



1500

To Vandenburg
From Abner Morgan
Date 12-16-94
Sbj Review of Work Records

As Per Section II A page 3086 Personal Department Policies & procedures

I am requesting to review my work record
that is on file at the Oakland yard

This request has been turned down before
IT is now as was before my right AS
A Union employee to review and have taken
out any document that HAS been outdated
and put in without my knowledge

H. Abner Morgan

cc IBEW
cc Congress Dellams
cc EEOC

0000961

December 19, 1994

TO: Personnel

FR: Abner J. Morgan

RE: REVIEW OF PERSONAL FILE

I, Abner J. Morgan, Jr. am requesting to view my personnel file kept in Amtrak's Los Angeles office. I have been told by R.D. Vandenburg that there is no official form for this request. So this letter will serve as an official request to view my personnel file. Please let me know the date and time that my IBEW Union Representative and myself can review and get a copy of anything we feel should not be in my file.

I am anticipating your timely response.

Abner J. Morgan, Jr.
Oakland Maintenance Yard
Electrician

Home:
2984 Pickford Way
Hayward, CA 94541-4530
(510) 582-3684

cc: IBEW
EEOC

00000958

December 19, 1994

TO: R.D. VANDENBERG

FR: Abner J. Morgan, Jr.

RE: REVIEW OF WORK RECORDS

As per Sections IIA, page 3086, Personnel Department Policies and Procedures, I am requesting to review my work record on file at the Oakland Maintenance Yard.

This request has been turned down before. It is now as it was before my right as a union employee to review and have documents taken out of my file that are outdated or put inside my file without my knowledge.

0000959

September 23, 1992

TO: Fred Wderhold, Jr.
FROM: Abner Morgan, Jr.

Dear Mr. Wderhold:

I am keeping you informed on what happened at our meeting on September 17, 1992 with myself, my union representative, Mr. Vandenburg and Ray Borge. I think you will be surprised at some of the things that were established and revealed.

I was called to this investigation because of my absenteeism (see leave record). On August 27th and 28th, I took off because of sickness. I brought in a doctor's note from my doctor. This was given to my foreman, Mike Fabian. I also made a copy for my records. Mr. Vandenburg said he never go it. But as he was talking and moving around, the note fell from the packet of papers he had in his hand. I also asked him if he had received a letter from my Family Psychologist, Patricia Canson (PhD). Mr. Vandenburg denied he had received it also. I gave him a copy of the letter. When I brought up the fact that I had only been sick only one other time this year. That fact was not taken into account. I also informed him that the other days that I had been off was because of family problems and that when I had called in I stated family problems was the reason for me not coming in. Whenever I have called in, I have given them 3 to 4 hours prior notice before my official reporting time and to prove this fact, it is in the foreman's log book. They did not want to get the log book they refused to allow me to substantiate my statement. Then they said what about the time you were late. Again, I asked that the foreman log book be made available for proof that anytime I thought that I would be one minute late, I would always stop and call in. Mr. Vandenburg verbally told me that my family problems were not his concern, his only concern was that others would use Abner Morgan's absenteeism and say why can Abner take off and not me.

I informed Mr. Vandenburg that my first and foremost priority is The Morgan Family and that my letter from my doctor should have explained how important my family is to me. Mr. Vandenburg then read a letter he said was written by a Mr. Lydon that stated if you were late or absent three times in a 90-day period for any reason, that you would be brought into an investigation. When I asked my union steward did he ever see this letter he stated no. I then asked for a copy to get clarification from the General Chairman, Vandenburg said he would give me a copy, but he didn't. At the end of our meeting, Mr. Vandenburg did (chill out) and listen.

EXHIBIT F

4. Up drove Mr. Denton and asked that we go into the office. I went with them without saying a word. We got into the office and Mike Fabian said I told Mr. Morgan to dig up the tar on 3 track and I saw him sitting down on a car. He gave me some lip about time slip. I need him to just do whatever I ask him. I sat in silence until after Denton read me the riot act about cleanliness. Then I asked was it my turn to talk.
5. I show Mr. Denton my line up sheet that said clean up 6 track not 3 track. Then I informed Denton that I never refused or said that I would not do what I was told and Mr. Fabian confirmed that fact. He just said I was slow in doing it. I then said what do you want me to do and what order do you want me to do it in. I went outside and dug up tar and picked up tie raps and finished my shift of work and went home without any problems. The next day after I called and talked to Mr. Carter, I receive a copy of Mr. Lydon's Amtrack Policy on Absenteeism.

Please note on the attached memo where the "thirty day period" has obviously been changed. As I have stated before, Mr. Vandenburg has used someone else's name and has forged a document.

Mr. Vandenburg has a problem when it is pointed out when he does something wrong or when he is caught in a lie. I had to come in six hours before my work shift so that this man could try to insult my intelligence by lying and trying to say he didn't receive my doctor's note, and that my family must wonder if I will have a job tomorrow because of this man hatred and vendetta of myself and any others who dare to question his authority.

Sir, I have tried to understand this man. I have talked to him, I have given him the benefit of the doubt. He is very concerned about the opinion of him that I gave to you. I can only tell the truth. But his actions against me, not only me but most of us that brought these issues to Congresswomen Barbara Boxer, are evident. I love working for Amtrak and only want what all other Amtrak employees want and that is to be able to come to work and do the best job for Amtrak. I want too feel that if I put in for a new job that the selection process will be fair and that my job is secure. People on the job see what has happens to me and I don't think it makes them feel good. Ask them.

We the Morgan Family
and Amtrak Family need
your help and understanding

Mr. Vandenburg did acknowledge that:

1. when ever I called in and said that I have a family problem, that it is bona fide
2. when I called in and said that I was sick, that if it is more than 3 days, that I must bring in a doctor note.
3. that I would receive a copy of the letter from Mr. Lydon.

I have no problem with the above. I got the feeling that we both understood each other. But the messages I got on Saturday, September 19, 1992 was confusing.

Facts as they happened on September 19, 1992 from my notes.

1. Punch in at 4:02 p.m., two minutes late because of traffic because of soccer game 75 miles away. Foreman Mike Fabian said don't punch in I will write you in. I said no I am late and I don't want any one to say I was later than what I am. I can only be honest.
2. Foreman Mike Fabian gave me my line up sheet and on it was my work assignment of cars to be worked and also clean the head of 6 track. I asked for a clarification of what type of clean up. He said I want you to clean and dig up the tar that has dropped from the engine. I then informed Mr. Fabian that as told to everyone from the General Foreman Gesky that the electrician clean area was the pipe shop and that I was the first electrician to volunteer and clean the shop and each craft had a work area to clean and that the laborer's area was the tracks. Mr. Fabian said I am the Foreman now and I am telling you to dig up the tar. I said Fabian I will do anything you ask me to do, but I am informing you that I will notify the union that you are having me do work that we both know is out of my craft.
3. I went and was working on the cars and was sitting down writing on the map form when Mr. Fabian appeared. He called a new employee who also came over. He then told me to dig out the tar. I said to Fabian I will do what you said, but again I am going to time slip you. Mr. Fabian became angry and walked off the train. I went over to six track and began to clean it up picking up the paper and cigarette butts. Note: there was no tar on six track. Mr. Fabian then appeared and informed me that he had in fact called Vandenburg and someone would be coming down to take care of things.

October 21, 1993

To: EEO
From: Abner Morgan

Again I am writing to you to inform you of the many blatant act of discrimination that I have had to endure at the hands of AmTrak mangers - R. D. Vandenburge and Ray Borge.

On 8-19-93 I was informed that Vandenburge and Ray Borge called a coach cleaner into the office. There they questioned him about his knowledge of a conversation that took place in June, 93 between Henry Riso, union person. When he told them that it was a normal conversation, Borge tried to get him to say things that were not true. When he told them that he would not change his statement, Vandenburge told him that he could make things hard on him.

On 10-04-93, the first day of class, I was pulled out and given a letter to show up for a fact finding investigation. On 10-11-93, I showed up for this fact finding thing and answered all Vandenburge's questions - proved my innocence. I thought things would be over with because they had talked to the other employee and he had calibrated my version of what took place.

On 10-11-93, I received a call from my union person asking would I accept a deal of receiving ten days back from the fifteen they took from me. I turned it down. I then knew that Vandenburge had been told that I said no to the deal.

On 10-12-93, a letter of notice of a formal investigation for 10-22-93 was typed. On 10-14-93, I was seated in class with my back to the door when Vandenburge came up behind me and grabbed my shoulders and begin to shake them violently forced my upper body to my knees. I have filed a report with SP police and OPD. This Act was witnessed by three other employees that were in the room and were two feet away. They have all given statements that say they saw him do this to me.

On 10-15-93 at 8:00 a.m. I was given the letter for the investigation:

I have endured numerous acts of verbal abuse from Vandenburge. I have endure the time off without pay for things that others do on a daily basis. I have endured Vandenburge telling me that my family means nothing to him. BUT I WILL BE DAMMED IF I SHOULD HAVE TO STAND FOR A MAN THAT HATES MY GUTS TO PUT HIS HANDS ON ME

LAST CHANCE AMTRAK
ABNER J MORGAN

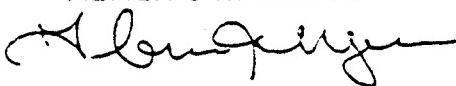


EXHIBIT G

January 18, 1994

Bob Ramirez
Fax 213 550 8208

To: EEO Officer
From: Abner J. Morgan
Subject: Acts of Discrimination Report - 1994

As I did in 1993, I will continue to document the many act of discrimination that I encounter. These blatant acts seem to go unnoticed and unpunished by Amtrak - Western Division. I charge that Amtrak Officer R D Vandenburg and R. Borge have violated my union rights and my human rights. I want to work at AmTrak without harassment. May I also state that my first EEO complaint filed on 5/25/93 has not been resolved. I would like this file as the second.

1. On 12/9/93 I was brought up on charges that was manufactured by Vandenburg and a SP employee . These charges cost AmTrak the salary of seven people. In this formal investigation, the hearing officer stopped the proceedings and ruled in my favor because he could see that the charges were not supported by any evidence. (See letter enclosed dated December 16, 1993, Case #303.93 - Decision).
2. On 12/27/93 I was ready to start a school that all my fellow electricians had previously completed, and as usual I was one of the last to go to the school because Vandenburg has said that I would get training over his dead body. The instructor G. Beanborn had told me that I was to work over until 1:00 that day and work through my rest days with Saturday and Sunday off. These were the same provisions made for my fellow electricians that were on the same shift.

I had gotten one hour into the school when Foeman L. Bilotti saw Beanborn and myself going through some of the equipment and he left and return about ten minutes later. He said " Abner didn't they tell you that your school had been cancelled! To Beanborn's amazement, but not my surprise, we both said that we had not been informed . I was paid for 1-1\2 hours of work. The school has not been rescheduled.

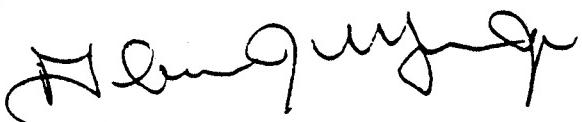
3. On January 4, 1993 the Oakland maintenance yard was inspected by the Division Superintendent, Bullock. This was the same superintendent that my Congressman, Ronald Dilemmas, had written to on behalf of myself.

4. During this inspection, I was told that Bullock found what he said were **RODENT DROPPINGS**, and took offense to it. I was given a letter of counselling. (See attached letter dated January 4, 1994). They found nothing wrong with the two pages of mechanical defects that I had repaired.
4. On 1/7/94, I put in a request to view and get a copy of my work record. My request has been ignored as of this date.

On 1/13/94 I called in one day sick. I work midnight shift (12:00 till 8:00 am. The next day my answering machine had a message on it from Lou Bulottie, Amtrak Officer, " Abner I understand that you called in sick last night. You didn't state your reason. So you can not come back to work until you bring in a doctor's note. I was not shocked but I was amazed by the frequency that the AmTrak mangers would inflict upon me, violating not only Amtrak policy, but our union contract. You see, this has happened more than once. The last time I called in sick was 11/16/93.

This recent time it cost me another day's pay because my doctor office could not see me until the next day. This time it was before the holiday, so the office wasn't open until 1/17/94. I know that there are other employees that they don't require a doctor's notes from when they return to work.

These outright acts of reprisals, this, as well as other acts, are well documented and should be addressed. I would like them to cease all of these actions. I am also requesting that these days be given back to me. I was ready and willing to work. I request I be compensated for January 13, 1994 until January 17, 1994.

A handwritten signature in black ink, appearing to read "Abner M. Murphy".

(g) Employees held away from their headquarters at the direction of the Company, on assigned rest days or holidays in accordance with this Rule, shall be allowed a minimum of 1 day at pro-rata rate for each such day.

RULE 17

JURY DUTY: (Amended December 6, 1978, Mediation Agreement, Case No. 10221)

When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury service for each such day, excepting allowances paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

(1) An employee must furnish the carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed.

(2) The number of days for which jury duty pay shall be paid is limited to a maximum of 60 days in any calendar year.

(3) No jury duty pay will be allowed for any day as to which the employee is entitled to vacation or holiday pay.

(4) When an employee is excused from railroad service account of jury duty the carrier shall have the option of determining whether or not the employee's regular position shall be blanked, notwithstanding the provisions of any other rules.

(5) Except as provided in paragraph (6), an employee will not be required to work on his assignment on days on which jury duty:

(a) ends within four hours of the start of his assignment; or

(b) is scheduled to begin during the hours of his assignment or within four hours of the beginning or ending of his assignment.

(6) On any day that an employee is released from jury duty and four or more hours of his work assignment remain, he will immediately inform his supervisor and report for work if advised to do so.

EXHIBIT I

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

'Statement of appearance for jury duty'

This will certify that Attorney Moreno Sr

did, pursuant to order of this court, report for jury duty in this court and answered roll call

1-30-95

This certification covers only the date noted.

RONALD G. OVERHOLT
Jury Commissioner

By Ronald G. Overholt

\$5.00 Jury Fee

EXHIBIT J

ATTACHMENT - EXHIBIT 9



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE NUMBER
233**
DISTRIBUTION DATE
February 7, 2005

1. **SUBJECT: SERVICE OF COMPLAINTS**
2. **PURPOSE:** To set forth the procedures for serving complaints filed with the Department of Fair Employment and Housing (DFEH).
3. **BACKGROUND:** Government Code section 12962 requires that complaints be served in person or by certified mail upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice. Section 12962 also requires that service occur at the time of the initial contact with the respondent or within 60 days, whichever occurs first. This Directive describes the procedures for serving employment, Unruh, and Ralph Act complaints and provides guidelines for ensuring that complaints are properly served.
4. **PROCEDURES:**
 - A. **Service Timeframes and Process:**
 - 1) Government Code section 12962 requires that complaints be served within sixty (60) days of filing. Department policy, however, provides that complaints be served as soon as possible after filing, according to the following guidelines:
 - a) Every effort should be made to serve complaints within two (2) working days of filing.
 - b) Complaints that are dual filed with the EEOC must be served within ten (10) working days of filing.
 - c) When the complaint is filed on complaint form DFEH 300-03 ("c" complaints), and the complainant has indicated that he or she has hired or retained private counsel for the purpose of representation of the claim in court, the private counsel, and not the Department, shall have the complaint served on the respondent(s). Within two (2) working days, and in no case later than ten (10) days, from the complaint filing date, the support staff will mail a copy of the complaint and related

documents to the complainant's attorney in accordance with the instructions in the Enforcement Division's Clerical Case Processing Manual.

- d) When the complaint is filed on complaint form DFEH 300-03 ("c" complaints) and complainant has not hired or retained private counsel, or the complaint is filed on complaint form DFEH 300-04 ("b" complaints) regardless of whether the complainant has hired or retained private counsel, then support staff shall serve the complaint and related documents on respondent(s) in accordance with the instructions in the Enforcement Division's Clerical Case Processing Manual within two (2) working days, and in no case later than ten (10) days, from the complaint filing date. A copy of the Right-to-Sue notice shall simultaneously be mailed to the complainant.
- 2) In the unusual event when service by the Department is not effectuated within the 60-day period required by Government Code section 12962 (e.g., the respondent refuses to accept service, etc.), it is the Department's position that service is valid as long as it is initiated within 60 days from filing.
 - a) When service was not initiated within 60 days of filing, the original complaint will continue to be used for service. A new complaint will not be filed. In the event that a respondent disputes jurisdiction, the District Administrator will immediately contact the assigned attorney.
 - b) If, after initiating service, it is determined the respondent's name is incorrect, **the complaint will be amended** to reflect the correct respondent name. If the respondent's address is incorrect, the original complaint will be **corrected** to redress the error and copied for a second service. (An address correction is NOT an amendment.)
 - c) Every service attempt will be recorded in the Case Diary and reflect the name of the person attempting service,